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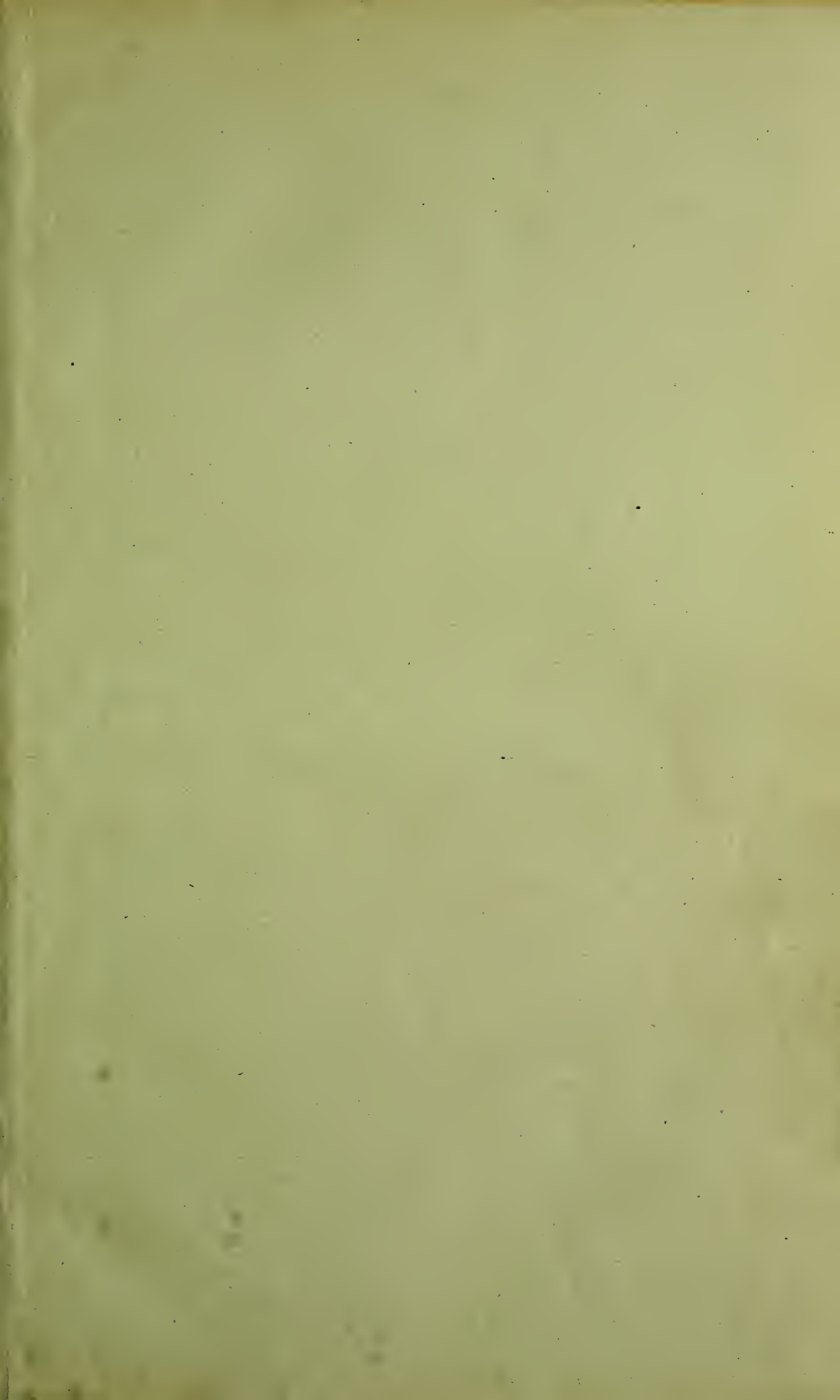
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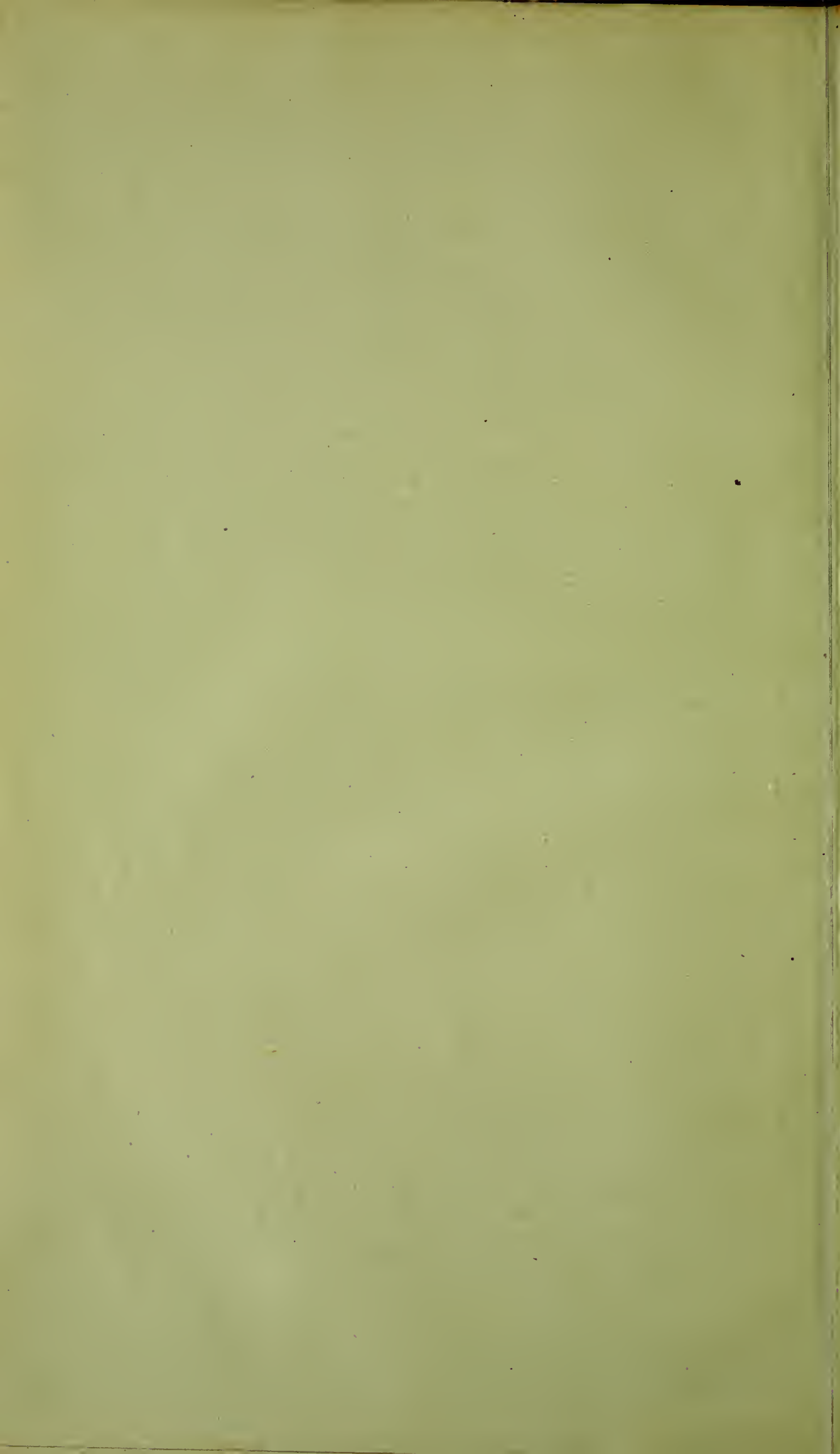
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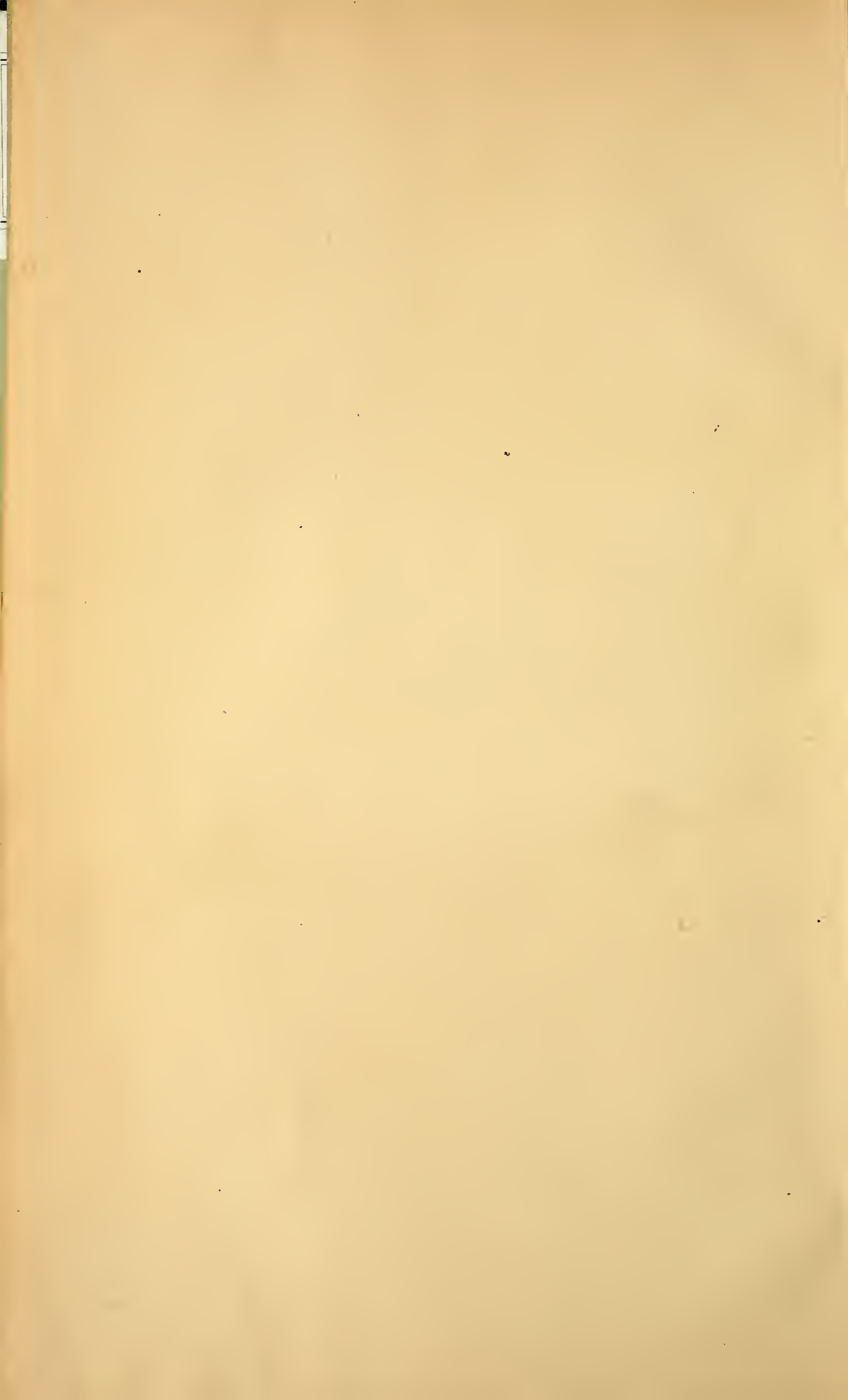
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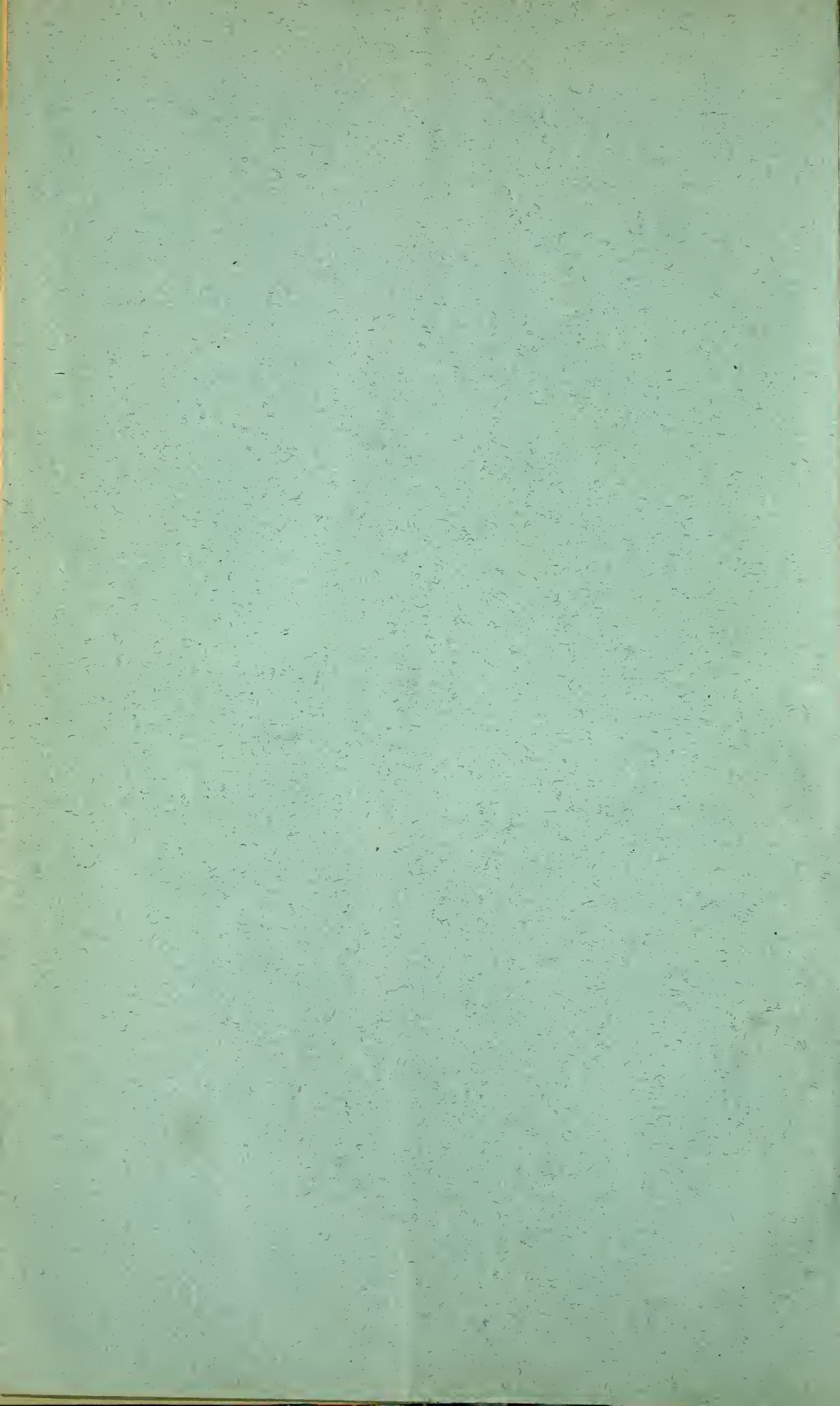
ARGUMENT
OF
JOHN C. BULLITT,

Counsel for the Petitioner,

FITZ JOHN PORTER,

BEFORE THE ADVISORY BOARD OF OFFICERS AT WEST POINT,

JANUARY 6th, 1879.




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DAY.

WEST POINT, MONDAY, January 6th, 1879, 10 A. M.

The Board met pursuant to the foregoing orders and adjournment.

Present—Maj.-Gen. John M. Schofield, U. S. A.; Brig.-Gen. A. H. Gerry, U. S. A.; Col. George W. Getly, U. S. A., and the Recorder. Also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

ARGUMENT OF JOHN C. BULLITT, OF COUNSEL FOR
PETITIONER.

Mr. Bullitt said: May it please the Board, the accusations against Gen. Porter, without following the technical form in which they were drawn in the charges and specifications, may be stated as follows:—

I. That Gen. Porter did not march, as ordered to do, at 1 A. M. of the 28th of August, 1862, from Warrenton Junction for Bristow Station, but delayed moving for two hours, or until 3 A. M.

II. That he did not obey the joint order of the morning of August 29th, 1862, to Gen. McDowell and himself, to move towards Gainesville.

III. That on the 29th of August, 1862, being with his army corps, between Manassas Station and the field of battle then pending, and within sound of the guns, and in the presence of the enemy, and knowing that a severe action, of great consequence, was being fought, and that the aid of his corps was greatly needed, he did fail all day to bring it on the field, and did shamefully fall back and retreat from the advance of the enemy, without any attempt to give them battle, and without knowing the forces from which he shamefully retreated.

IV. That while a severe action was being fought on the 29th August, 1862, by Gen. Pope, and believing the troops of Gen. Pope were sustaining defeat and retiring from the field, he did fail to go to the aid of Gen. Pope, and retreated away and fell back with his army, and left to the disasters of a presumed defeat, Gen. Pope's army, and failed, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the capital of the country.

V. That he disobeyed the order of 4.30 P. M. of August 29th, 1862, to attack the enemy on his flank or rear.

VI. That he disobeyed the order of 4.30 P. M., to attack the enemy, and retreated from advancing forces of the enemy, without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was ordered to make, to secure a decisive victory, and to capture the enemy's army: results which must have followed from said flank attack had it been made by Gen. Porter in compliance with the said order.

These six propositions present the substance of all the accusations upon which Gen. Porter was found guilty by the court-martial which tried him, and rendered its decision January 10th, 1863; and it appears to me, that the first inquiry should be as to the precise object of this investigation, and the nature of your duties in connection with it.

You have been directed by the President to examine the record and proceedings of the court-martial, to hear such new evidence as is on file in the War Department, and such other evidence as may be presented to you, and to advise the President of what in your judgment may be his duty in the premises.

The duty devolved upon you then is, I think, in one sense appellate. That is, you are to review the proceedings of the court-martial, and to examine the evidence which was submitted to them; you are to examine the findings of that court; you are to examine the opinion which was submitted by Judge Advocate-General Holt to President Lincoln; and you are to determine whether the evidence was sufficient to warrant the findings of that court.

However, you are not bound to stop at that point. You have then the right to examine the testimony which has been submitted to you from the record of the original proceedings, together with the new testimony; and you are to determine, in view of all which is thus properly before you, whether the findings of the court-martial against Gen. Porter are supported in fact and law, and whether they should be allowed to stand.

In examining the proceedings before the court-martial, and the findings of that court, we must recognize the fact that they are entitled to very great weight. We must admit that *primâ facie* you should assume that they are right, or were right at the time, with the light which that tribunal had before it; and that it is for us to satisfy you, either from the proceedings of that court, and the evidence which was before it, or from the subsequent evidence which we have introduced, that it was in error. We must begin with the assumption that the laboring oar is upon us; that the onus is upon us to show the errors into which the court-martial fell then, owing either to a want of proper construction of the evidence before them, or the want of knowledge of the facts which you now know as developed by the subsequent evidence.

So also with reference to the approval of the sentence of Gen. Porter by President Lincoln. You should, as we think, regard that action not only with respect, but accord to it much weight, as due to the opinion of the President of the United States in a case such as this.

But, while we concede all this, still if we are able to show you that the approval of the findings of that court, and that sentence, by President Lincoln were due to a misapprehension on his part, and that he

misunderstood the facts, we have a right to ask you to disregard his approval altogether.

You are acting under what I suppose may be called the pardoning power of the President. The sentence against Gen. Porter was, in part, executed; but in part it is being executed every day that he lives. Ay, and it will be executed upon his posterity as long as it stands. He was dismissed from the army under that sentence; and the effect of a part of that sentence is to disqualify him from holding any office of honor or profit under the United States Government—a matter which probably is not of the slightest importance to him so far as the profit is concerned; but, so far as it affects his good name, his honor and his reputation, it is of the last importance to him, and those who cling to him and surround him, that he should be vindicated.

He is not invoking the pardoning power of the President upon any ground of clemency or mercy; he does not ask that the President of the United States shall say to him, "You shall be pardoned, because you have suffered," or "because you have suffered beyond what your crime deserved."—He is not asking that. And to-day, if the pardon of the President, or the revocation of this sentence, were to depend upon his accepting it upon the concession that he had been guilty of the crimes with which he was charged, and that he had suffered enough for those crimes, he would spurn the offer. If he cannot obtain what he believes he deserves, upon the ground, and the ground alone, that the sentence was founded upon error and misapprehension, and that injustice was done him, then he is unwilling to accept anything from the government or its representatives. He recognizes that in asking you to look at the findings of the court-martial and the proceedings before them, the duty is incumbent upon him to meet these charges frankly, without fear and without a resort to technicalities, and that every fact connected with this transaction, and every word which he has uttered in reference to it, must be ransacked to see whether there can be found any ground upon which that sentence or those findings can be sustained.

In approaching this subject, it seems to me that the first thing in order is, to examine the proceedings of the court-martial and see how far the evidence submitted to them sustains the charges which were made.

ORDER TO MARCH AT 1 A. M. AUGUST 28th, 1862.

The first point that presents itself is, that of disobedience to the order to march at 1 A. M. of August 28th, 1862. He was found guilty of disobedience under the ninth article of war, by reason of having failed to march at one o'clock on the morning of August 28th, as directed in that order. In the testimony to which I shall refer, I shall only read from one of the witnesses who was examined on behalf of Gen. Porter, because I believe that what Gen. Butterfield says on page 185 (O. R.) states the whole position, and states it so clearly that it is almost unnecessary to read any other—certainly unnecessary for me to do it. You no doubt recollect the effect of the testimony of the witnesses upon this point. Gen. Butterfield says (page 185, O. R.):—

"Answer. The order I believe was for Gen. Porter to move his forces at one o'clock in the morning to Bristow Station. He handed the order

to Gen. Morell, or to Gen. Sykes, who were present, and said there was a chance for a short nap, or something of that sort (I do not remember the exact words), indicating that there was but little time for preparation. Gen. Sykes or Gen. Morell, I do not remember which (one or both of them), spoke with regard to the fatigue our troops had endured, the darkness of the night, and the fact that, in their judgment, the troops would be of more service to start at a later hour than they would be to start at the hour named. In reply to these remarks, Gen. Porter said, rather decidedly, that there was the order; it must be obeyed; that those who gave the order knew whether the necessities of the case would warrant the exertions that had to be made to comply with it. I do not state that as his exact words, but as the substance of what he said. Capt. DeKay, who brought the order, was then present, and was asked some questions about the road. He stated that it was very dark, and that the road was full of teams. General Sykes, I think, suggested that it would be impossible for us to move at the hour named, if the road was full of teams; that they could not find the way. Gen. Porter called two aids and sent them off to investigate the condition of the road, and to ask Gen. Pope to have the roads cleared, so that we could come up. When we got outside, the darkness was so apparent (to use such an expression), and it seemed to be such a matter of impossibility to move, that Gen. Porter said:—‘In consideration of all the circumstances, I will fix the hour at three o’clock, instead of one. You will be ready to move promptly.’ And I subsequently wrote an order, in Gen. Porter’s tent, for my command to be in line to march at three o’clock.”

This testimony of General Butterfield is confirmed by Gen. Sykes, by Gen. Morell, by Gen. Warren. Substantially it is confirmed by almost all the witnesses who have testified on both sides.

When we come to examine the evidence which was relied upon by Judge Advocate-General Holt, before the court-martial, under this specification, we find that he first recited Capt. Duryea’s testimony. He said:—“The first answer to the position taken in the defense, that in consequence of this darkness, it was impossible to obey the order, is found in the testimony of Capt. Duryea, who deposes that on the night of the 27th of August he marched with his command from Warrenton, and did not halt until about midnight, and that ‘he did not experience any unusual difficulties growing out of the night.’” (Page 303, O. R.)

It would be supposed that the Judge Advocate, when citing Capt. Duryea for the purpose of proving that there were no unusual difficulties growing out of the night, would have looked through the remainder of his testimony to see how far that statement was sustained by the whole of his testimony. I have read all that was cited by the Judge Advocate, in his opinion, from Capt. Duryea; and I will now read what he omits from his opinion:—

“Q. Was the part of the road over which you passed obstructed by wagons or otherwise?

“A. *The march was very slow. I should think they halted every ten or fifteen minutes. It was a very tedious march.*” (Page 116, O. R.)

Again: “Q. Where were you, and in what position, on the 27th of August last?

“A. We were on the march from Warrenton, and on the night of the 27th of August we halted, I should think, some *three or four miles* this side of Warrenton.

“Q. At what hour of the night did you halt?

“A. About midnight.” (Page 115, O. R.)

Now, the evidence of Capt. Duryea was relied upon by the Judge Advocate to prove that there were no unusual difficulties in the way of marching that night, and yet Capt. Duryea says that they halted every ten or fifteen minutes, and that it was a very tedious march. The gentlemen of the Board know a great deal more, of course, than I do about the unusual difficulties in the way of marching. But I suppose that it does not require a soldier to know that where troops are marching from about dark until midnight, six or seven hours, and they have to halt every ten or fifteen minutes, there must be some unusual difficulties in the way of marching. Further than that, he testified that they halted, “I think some three or four miles this side of Warrenton.” They left Warrenton by daylight, and they were until midnight marching three or four miles. In other words, they marched probably not over half a mile an hour. Is it possible that this force would have taken five or six hours to march a distance of three or four miles, unless there had been some unusual difficulties in the way? It appears to me, that when the Judge Advocate was relying upon this testimony to prove that there were no unusual difficulties, if he had only turned to the other portion of the testimony of this same witness, for the purpose of ascertaining what were the real facts, he would have seen that the facts stated by the witness entirely destroyed the opinion expressed by him, that there were no unusual difficulties.

He then relied upon Major Barstow; but all that witness says is:—

“I have no vivid recollection of that night beyond other nights. It seemed to be very much like other nights on which we moved.” He adds that no difficulty was experienced in marching the troops up to the hour at which they encamped. He says he reached Buckland Mills at nine o'clock, and started from there at daylight the next morning. He had no special occasion to observe the character of the night after nine o'clock (page 111, O. R.).

I suppose that the testimony of that witness would be worth just about as much as that of any one of the gentlemen in this room, if he were asked to-day what was the character of the night of the 27th of last August. The Board may have better memories upon that subject than I have, but I doubt whether any one of you, unless you have special occasion to remember it, could say what the character of the night of the 27th of last August was. You might be able to remember it if there was something to impress it upon your minds.

Another witness that the Judge Advocate-General relied upon is Lieut.-Col. Myers, and of him he said:—

“Lieut.-Col. Myers, who, as Chief Quartermaster to Gen. McDowell, had charge of the trains passing over this road on the night of the 27th,

states that he was up nearly all night. He was asked the following question:—

“Q. In view of the condition of the road, as you described it, and also the character of the night, was or was not the movement of troops along that road practicable that night?”

He replied:—“I do not know of anything to hinder troops marching along the railroad then. There was a road running each side of the railroad. I should think it would have been easy for troops to move along there, although I may be mistaken in that.” (Page 303, O. R.)

I am giving you the testimony which is cited in the opinion of the Judge Advocate. I want to show that the witnesses upon whom he relied in fact proved the very contrary of that which he deduced from their testimony. Now that which is omitted of the testimony of Col. Myers upon this subject is this:—

“I was up nearly all night. It was quite dark. There was no moon. It was a dark night. I could not state about it toward morning particularly.” (Page 108, O. R.) And again:—“I think all my train went into park. The wagons were coming in all night, and I could hear the wagons rolling nearly all night. No trains passed me that night.” (Page 104, O. R.)

He halted within a short distance of Bristow Station. He says:—“There were no wagons in front of me. I was with the head of the train.

“Q. You have been understood to say that the wagons were rolling all night?

“A. Yes, sir; coming into park, as they got along all night. The rear wagons take a long time to come up in a long train of *two thousand or three thousand wagons*.

“Q. Then they were coming into park all night from the road?

“A. Yes, sir; wherever they could find a place to park, they parked.” (Page 110, O. R.)

Thus you observe that the Judge Advocate, in relying upon Col. Myers, cited him to prove that there was no difficulty in marching along that road that night; and the Judge Advocate took no notice of the other facts which this witness states, that there were from two thousand to three thousand wagons along the road upon which Gen. Porter would have been obliged to march. I feel, of course, some little diffidence in talking to men who understand that subject so much better than I do, still I do not think it requires a military man to form an opinion of the obstruction which would be offered in a road, by two thousand or three thousand army wagons; for it is a very simple question of calculation: forty feet to a wagon and team, multiplied by three thousand wagons, would make one hundred and twenty thousand feet, that is equal to twenty-three or twenty-four miles, strung out on a line; if doubled, equal to eleven or twelve miles; and if put four abreast, equal to four or five miles. Now, assuming that upon this road anywhere, army wagons were moving four abreast for five miles, can any sane man say that this was not a serious obstruction to marching along that road on a dark night? Would any com-

mander of a force, who had any regard for the efficiency of his corps and the condition of his troops, when he was to perform a duty such as Gen. Porter knew was before him—would he feel that he was justified under such circumstances, to march over a road with such obstructions upon it? It may be said that it is proven here that on some parts of the route there were roads on each side of the railroad. But, on the other hand, it is also proven that for a considerable portion of this distance, there was a single road. It is further proven that a portion of this road was a recently made army road through woods, and with stumps in it. Now I submit that the evidence cited by the Judge Advocate shows the entire mistake into which he had fallen upon this whole subject; and that his mind was so filled with prejudice, so poisoned against Gen. Porter, that, able as he was, and thorough in the performance of his duty as he was, he was unable to review this evidence as it ought to have been examined at that time.

The Judge Advocate also referred to Gen. Reynolds as sustaining the ground, that the march could have been made by Gen. Porter that night. He said :—

“General Reynolds, called by the accused, and who entertained a very strong estimate of the embarrassments in the way of the march of the troops on the night of the 27th, over the road to Bristow Station, admitted on cross-examination, that dark as was the night, troops could have marched, provided that they had had a road and a guide to conduct them, both of which the command of Gen. Porter had.” (Page 303, O. R.)

Now, when you look at the testimony of Gen. Reynolds, you will find that this was the question put to him by the Judge Advocate :—

“You say that the night of the 27th of August was too dark to have marched troops over a country not known to them, without either a guide or having a road to follow; suppose they had a road, and a guide who had passed over the road a few hours before, who was acquainted with it, or professed to be acquainted with it, and who proposed to conduct the army, and that army was to march during that night over one of the *country roads of Virginia*, would it have been practicable to do so?

“A. I suppose it would.” (Page 171, O. R.)

That was the question put to Gen. Reynolds, and the answer upon which the Judge Advocate founded a quotation from Gen. Reynolds as supporting the view for which he cited it.

He omitted, however, the following :—

By the accused.

“Q. What was the character of the night?

“A. It was a very dark night, as was the succeeding night. I recollect both of them distinctly, from having been about a good deal until after twelve o'clock each night.

“Did you consider it too dark a night in which to march troops in masses over an unfamiliar country?”

“A. I should think so, certainly, without a guide, or marching on roads. I do not think it possible to have marched troops on such a night, without having a good guide, or marching on a road.

“If the road over which you were to pass were, to some considerable extent, obstructed in several places, would you have regarded the marching of large masses of troops on that night as practicable?”

“A. *I should not.* I should have considered it as a very precarious undertaking.” (Page 170, O. R.)

We must suppose that a man in the position which Gen. Reynolds occupied, could have formed as good a judgment as to what should have been done under the circumstances, as any man who could have been called upon at that time. Had the Judge Advocate put the question to Gen. Reynolds, in the form in which it must present itself now, that is, if he had put in as a hypothesis that there were three thousand wagons upon that road, that it was not an ordinary Virginia country road, but that it was in places a narrow, recently made army road, with stumps in it, and running through thick woods, and crossed by small streams, and by the railroad, on parts of which trains were running, as has been proven by abundant testimony—in other words, if he had stated the facts as you know them to have really existed—then Gen. Reynolds’ opinion would have been even more emphatic, if he could have made it so, than as expressed in his answer last quoted.

Now we come to the citation of the Judge Advocate from Gen. Heintzelman, to the effect that it was not impossible for troops to have marched over that road on the night of the 27th. But he omitted to note that part of Gen. Heintzelman’s evidence, which seems to me to be to the contrary.

“Was there, on the night of the 27th of August, a route of march practicable for Gen. Porter’s troops from Warrenton Junction to Bristow Station, so far as you have knowledge of the country?”

“A. That would depend upon where the wagons were; *there were places where the wagons would have entirely obstructed the road.*” (Page 82, O. R.)

What could be more conclusive than this? How can any man in his senses, knowing the fact that these wagons, two thousand to three thousand or more in number, were upon the road over which Gen. Porter had to move, gravely quote Gen. Heintzelman as authority for saying a night march under such circumstances was practicable?

The Judge Advocate also relied upon Gen. Pope.

In his opinion the night was good for marching, and the road was clear; but even if the roads had been entirely blocked up, *the railroad track was clear*, there was no obstruction to the advance of infantry. It might be inferred from this, that the march would have been but a pleasant summer evening’s excursion, for he seems to think that there could not have been the slightest difficulty in nine thousand or ten thousand men with artillery marching over the railroad track. Well, it may be that that is a pleasant road for the general of an army; but I do not believe anybody except such a man would think that a railroad track was a reasonable road for a private citizen to go over, much less for an army of nine thousand or ten thousand men with artillery.

But what does Gen. Heintzelman say about marching over the railroad track? Gen. Heintzelman says (page 81, O. R.), "It was very difficult to march on the railroad at night. *Some of the rails were torn up, ties piled upon the track, culverts destroyed, and bridges burned.*"

The importance of following up this testimony, as I have endeavored to do, in reference to this point, seems to me to be this: I have endeavored to show you from these quotations of testimony, on the part of the Judge Advocate, that he was relying on the testimony of witnesses, who themselves show, that the point for which he was contending was not sound, and that if he had only given a fair or full summary or statement of the whole of their evidence, the exact reverse of the inferences drawn by him would have been conclusively established.

The Judge Advocate says, the manner of marching was an indication that Gen. Porter was not trying to execute the order in good faith. But Gen. Porter's order to Col. Brinton, at twelve o'clock at night, to clear the road; his requests to Gen. Pope to assist him to clear the road; his orders to his staff and their efforts; Gen. Porter's own exertions to get the wagons out of the way; Gen. Pope's declaration that Gen. Porter was reported as "coming along slowly," pushing *the wagons out of the road*; the evidence of Generals Sykes and Morell and Butterfield, and of the other officers of Porter's command who were examined as to the presence of the wagons and the extreme difficulty of marching on account of them; the fact that Gen. Porter's general officers all urged the delay; the fact that he only yielded to their urgency a reluctant consent, after seeing that the darkness was "so apparent," and it was "such a matter of impossibility to move," as was proven by Gen. Butterfield; the fact that the troops were in no condition to march,—all this had no weight with the Judge Advocate-General. He brushes them away as though they were but feathers, while the slightest expressions of an adverse character, no matter from what source they came, were magnified to the last degree.

We would have no occasion to take issue with the Judge Advocate-General on this matter, if it was not that this opinion, this revise by him, has a most important bearing upon this case, and that this Board, as I think, must give to that opinion the most careful and most attentive consideration. It is entitled to such consideration by reason of the distinguished official position held by the Judge Advocate; and more than that, by reason of the very able character of the officer who filled that position. No man who has any familiarity whatever with the character of the Judge Advocate-General, or his public career, can fail to accord to him the very highest degree of intellectual power. His opinion, of which I am speaking, was given to the President of the United States, in response to written instructions dated January 12th, 1863, "To revise the proceedings of the court-martial in the case of Major-Gen. Fitz-John Porter, and to report fully upon any legal questions that may have arisen in them, and upon the bearing of the testimony in reference to the charges and specifications exhibited against the accused and upon which he was tried." (Page 299, O. R.)

That opinion was necessarily *quasi-judicial* in its character. It was for the purpose of enlightening the conscience and instructing the mind of the President in regard to the facts involved in the most important

military trial that had taken place in the history of the nation. The sentence of the court-martial was the severest that could be imposed, short of death, and to an honorable, high-toned, and sensitive nature, it was perhaps worse than death. The accused had enjoyed the highest degree of confidence on the part of the President, of the army, and of the nation. He had won signal honor and distinction on more than one hard-fought field. In soldierly attainments and qualities, in devotion to his country and to the cause in which he was enlisted, in energy, zeal, and perseverance, and in the power to command, he was regarded as the peer of the truest and best of his comrades in arms.

The conviction of such a man, by court-martial, of the crimes with which he was charged, produced a moral shock throughout the whole country. We may well imagine the effect on the mind of the President when he found that a general of such character, and one in whom he had put such trust and confidence, had been convicted, by a court of his fellow-officers, of such crimes. He instructed the Judge Advocate-General to revise the proceedings of the court-martial, and report fully upon the legal questions, and upon the bearing of the testimony in reference to the charges and specifications. That report was beyond a doubt expected by him, and believed by him, to be a fair review of the testimony both for and against the accused. The President had a right to act upon it as the unprejudiced conclusion of a *quasi*-judicial examination and review by an able and experienced lawyer, who stood in a relation to him and to the case, that enabled and required him to submit, for the guidance of the President, a candid, impartial, and exhaustive summary of what was established by the evidence *on both sides*. The action of the President, in approving the sentence, carried very great weight with it at that time. It is entitled to the highest respect at your hands now, and we are bound to realize this, and to show how it was that this approval was made under a misapprehension as to the facts.

It is for this reason, among others, that I have deemed it proper to call your attention to the character of the "revise," or opinion of Judge Advocate-General Holt, submitted under date of January 19th, 1863, to President Lincoln, and that I shall still further endeavor to show how far that opinion was erroneous, upon the points to which I have referred. I have tried, and will still try, to follow it closely and fairly.

The Judge Advocate, when he comes to state the defense which was made by Gen. Porter, upon the point which we are considering, says this:—

"The violation of this peremptory order is sought to be excused, or, rather, fully justified by the accused, on three grounds:—

"First, the fatigue of his troops; second, the darkness of the night; third, the obstructions on the road, growing out of breaks and difficult places in it, and the presence of wagon trains in motion." (Page 303.)

Having thus stated the grounds of the defense, we would naturally suppose that he would then have given the strong points in favor of Gen. Porter, as presented by the evidence. I will read all that I have been able to find in that opinion or revise, stating what Gen. Porter's defense relied upon:—

“The generals who advised and participated in the determination not to move at one o'clock deposed that their troops were very much exhausted.

“Gen. Reynolds, called by the accused, and who entertained a very strong estimate of the embarrassments in the way of the march of the troops on the night of the 27th, over the road to Bristow Station, admitted, on cross-examination, that dark as was the night, troops could have marched, provided they had had a road and a guide to conduct them;” and there is added by the Judge Advocate in the same sentence, “both of which the command of Gen. Porter had.” (Page 303.)

“Gen. Heintzelman testifies that it was not impossible for troops to have marched over that road on the night of the 27th, but that there would have been a great many stragglers, of which he said there are more or less on all night marches. He describes the road as narrow, but in tolerably good condition.” (Page 303.)

“It is true that at twelve o'clock on the night of the 27th, Lieut. Brinton came from Catlett's Station to Warrenton Junction, and on having an interview with the accused, he spoke to him of the wagons on the road, whereupon accused directed him, on his return, to have the road cleared. On his arrival at Catlett's Station he told the adjutant to send out some men to get these wagons out of the way. He does not know that the direction he gave was complied with.” (Page 305.)

“On the consultation which took place between the accused and his generals when the order was received, the opinion was expressed by the latter (and it has been repeated in their testimony) that nothing would be gained in the way of time, by starting at one o'clock instead of a later hour—say three or four.” (Page 305.)

“It is true that Gen. Griffin says, ‘I know the artillery which followed the brigade—that is, a carriage or two of the artillery which followed the brigade—got stuck in the mud, or in a little creek, and had trouble in getting out.’ When more closely questioned as to the cause of the halt, he said, ‘I halted because I found, when I got to the point where I did halt, that I had only a portion of my brigade with me. In the darkness, by some accident or other, we had become separated, and I halted to get my brigade together, and the artillery, I presume, is what detained us there until we started again. That is my impression. I do not know that positively Gen. Morell was in command of the division.’” (Page 305.)

I have given you all that the Judge Advocate cited as sustaining Gen. Porter's defense. I have looked to see what portion of the revise or opinion by the Judge Advocate, which was devoted to this particular subject, applied to the elucidation or setting forth of the testimony, upon this point, offered by Gen. Porter. While four pages are devoted to this subject, but thirty-six lines of those four pages are devoted to showing what the evidence which had been adduced by Gen. Porter in his defense was.

You have heard this record. You have heard the testimony of Gen. Morell, Gen. Sykes, and the other witnesses, who proved what the character of the night was, what the character of the obstructions was, what the difficulty was in the way of Gen. Porter marching, what his

own acts and declarations were at the time he received that order, and what he did the next morning when he was endeavoring to be up on that march; and you can now determine how far that which I have just read was a fair statement to be set down in an opinion upon a case such as this, involving issues such as were involved here, and intended to enlighten the President's conscience and inform his mind, when you see that of four pages devoted to this subject, only thirty-six lines were given to the testimony on the part of one who had been accused of such crimes and found guilty, notwithstanding that that testimony was of the character which this record shows, and which, as your memory must verify, was of the very strongest nature in support of his defense.

Now, for the purpose of seeing how the Judge Advocate, in this revise, seems to have been carried away, how he seems to have lost sight of the testimony upon the part of Gen. Porter, and to have magnified every expression which was dropped by a witness who seemed to be adverse to Gen. Porter, let me call your attention to what he said on page 305 in reference to the testimony of Capt. De Kay.

“There are certain other facts disclosed in the testimony which go far to indicate a settled purpose on the part of the accused to disregard this order of his commanding general. It was couched in terms as strong as a military man could employ in addressing a subordinate; and yet its urgent language was not commented upon, and does not seem to have attracted any attention, as appears from the conversation that ensued between the accused and his generals after its receipt. The accused, as we learn from Capt. De Kay, handed it to one of his generals present, saying, ‘There is something for you to sleep on,’—not something that you are to prepare to execute—not something which announces that the army with which we are connected is threatened by great perils, which we must make extraordinary efforts to meet, but ‘Something for you to sleep on.’ The whole tone of that conversation was to the last degree saddening and discouraging for those who believe that in the prosecution of this war much vigor is much wisdom.” (Page 305, O. R.)

It would be inferred from this that there was no doubt but that these were the precise words used by Gen. Porter:—“There is something for you to sleep on.” The emphasis put upon them would convey the impression, too, that they were said in a tone and manner evincing an unquestionably bad spirit on the part of Gen. Porter, and that his generals sympathized with him in the feeling. These words seem to me to be innocent enough; I do not perceive any such wicked purpose as is ascribed to them by the Judge Advocate. I submit, that when relying upon them, he should have at least made some reference to the other side of the question. On the contrary, the statement is made as though it was a conceded and uncontradicted fact that those were the exact and precise words used by Gen. Porter. Now let us turn for a moment to the testimony of Gen. Butterfield. I have read it already, but this part of it I will read again. Gen. Butterfield says (page 185 of the record):—

“He (Porter) handed the order to Gen. Morell or to Gen. Sykes, who were present, and *said there was a chance for a short nap*, or something

of that sort. (I do not remember the exact words).” Again, after stating the urgent reasons pressed by Generals Sykes and Morell for the delay of the hour of marching, he says:—“In reply to these remarks, Gen. Porter spoke rather decidedly; that there was the order, it must be obeyed; that those who gave the order knew whether the necessities of the case would warrant the exertion that had to be made to comply with it.”

I submit, that in a revise or opinion such as this was, the words of Gen. Butterfield should have been quoted, if those of Capt. De Kay were worthy of so important a notice. Gen. Butterfield, it seems to me, was not at all more likely to be mistaken than Capt. De Kay. I think that if the Judge Advocate believed that the testimony of Capt. De Kay was of so much importance as to give it the prominent position he did give it in this opinion or revise, he should at least have put the opinion of Gen. Butterfield in the other end of the scales for whatever weight it was entitled to. The Judge Advocate said that the language and tone employed by Gen. Porter was “saddening and discouraging.” But certainly there was nothing in the language of Gen. Porter to which that remark could apply, for Gen. Porter insisted that the order must be obeyed and that they must march; and he yielded only to the urgent solicitation of his officers, who were in his tent. We do not contend for a moment that Gen. Porter was not responsible for what he did. I do not suppose that any general has a right to screen himself from responsibility by throwing it upon his subordinate officers. But I do suppose that resort may be had to the opinions of those officers;—the men whose duty it was to see that their troops were in an efficient condition, the men who were responsible for the discipline and efficiency of those troops. I suppose it is a proper thing for the commanding officer not only to consult them, but to give due weight to the opinions which they may express. I suppose that no general who is worthy of a command would fail to give a proper consideration to the opinions and advice of his subordinate officers standing in the relation to him which Generals Sykes and Morell did to Gen. Porter on that night.

But there is another aspect in which the opinion of the Judge Advocate, to which I have referred, becomes a matter of importance. We have stated that we considered the finding of this court-martial as entitled, not only to respect at your hands, but to very great weight with you in your consideration of this subject. We have no method of ascertaining the reasons which operated upon this court-martial in arriving at its conclusions, because the members of the court do not disclose the grounds upon which they act. But we must look to this opinion of the Judge Advocate as being the only exposition of the views which the members of that court entertained; and if it appears, by looking at the opinion, that it does not rest upon sound logic, if you come to the conclusion that the reasons given by the Judge Advocate do not sustain the findings and the sentence, then I think you will conclude that the opinion of the court-martial is not entitled to any more weight than that opinion is, and that if the one falls the other must fall with it.

I do not propose to enter into a more minute examination of the evidence, to show that the darkness of the night and the obstructions

were such as to justify Gen. Porter in changing the hour of marching from one to three.

The facts, as shown by Mr. Maltby in his argument, are so clearly established on this point as to render it unnecessary. It would be but a waste of time. My purpose was to prove to you that the finding of the court-martial was not sustained by the evidence then before the court, and I have endeavored to do so by showing that the inferences drawn by the Judge Advocate were entirely fallacious.

For this purpose I have shown you upon what he did rely and the mistakes made by him, and I am confident you must find that his conclusions are not well drawn from the evidence, and I am further confident that on the whole evidence, when taken together, Gen. Porter should have been acquitted of disobedience under the ninth article of war.

But the Judge Advocate took the position that it was the duty of Gen. Porter to have marched at one o'clock at night, no matter what were the obstructions, no matter what was the darkness. I do not propose to elaborate this point, but simply to state the propositions, as I understand them, rather than to discuss them. I suppose that an officer, when he receives an order to be executed in the presence of the commander who gives the order, is bound to execute it without considering what he has to do, except merely to execute that order. But I suppose, that where an order is given to an officer at such a distance from the commander who gave it, that it is impossible for the latter to know the precise circumstances and conditions surrounding the officer receiving the order, at the time that it is received by him, that then a question may arise as to what that subordinate officer should do, and he has a right to consider whether the conditions in which he is placed are those which were contemplated by the commander who gave him the order, and if he finds that those conditions have changed, or that his superior officer did not at the time understand or know what those conditions were or would be, then he has a right to exercise his best discretion in endeavoring to comply with that order in spirit, as far as he is able to do so.

I submit that when you come to examine this order to Gen. Porter, to march at one o'clock at night, you will find that the spirit of that order, the purpose of that order, the end of that order was, to bring Gen. Porter, with his command, to Bristow Station in such a condition as to be used for the purpose of attacking the enemy and driving them from between Manassas and Gainesville, where they were then known to be. I submit further, that if Gen. Porter, knowing that the purpose of being called to Bristow by Gen. Pope was, that he should be used for the purpose of attacking the enemy when he arrived at Bristow Station, knowing that in order to do that he must have his troops fresh, knowing that if, under the circumstances shown by the evidence, he had his troops up to move at one o'clock at night, they would be so fatigued, so worn out by waiting until daylight enabled them to move, that when they did arrive at Bristow Station they would be entirely incompetent and unable to be used for the purpose for which they were intended, that then, if Gen. Porter had, under those circumstances, determined nevertheless to move at one o'clock, it would have been such a miserable subterfuge and pretense of obedience to the order, that he would have deserved the censure which was heaped upon him, instead of the commendation which he

should have received for exercising a proper discretion and judgment in so handling his troops, in so moving and marching, that he could accomplish the only true purpose of a soldier by being most efficient at the right time, and at the right place, against the enemy upon whom he was moving.

If I am right about it, that this was the true aim and purpose of this order, and if I am right in the construction which I put upon the nature and binding force of these orders, then I think it is quite clear that Gen. Porter, in determining to move at daylight (the only time at which, as I think you must be satisfied from the testimony, he could move with efficiency), was doing that which he ought to have done, was doing that which, under the circumstances, was the only proper thing for him to do; that there is no military rule which imposed upon him the necessity of attempting to move at one o'clock that night; and that therefore the opinion and finding of the court-martial upon this point in the case was manifestly an error.

THE JOINT ORDER TO McDOWELL AND PORTER OF AUGUST 29th,
1862.

We now come to consider the next proposition, which is the charge that Gen. Porter disobeyed the joint order of the morning of August 29th, 1862, to Gen. McDowell and himself to move towards Gainesville.

The joint order was in the following words:—

“HEADQUARTERS ARMY OF VIRGINIA,
“CENTREVILLE, August 29th, 1862.

“You will please move forward with your joint commands towards Gainesville. I sent Gen. Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his *aid-de-camp* last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where Gen. McDowell was until a late hour this morning. Gen. McDowell will take immediate steps to communicate with Gen. Ricketts, and instruct him to join the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run by to-night or by morning. The indications are that the whole force of the enemy are moving in this direction at a pace that will bring them here by to-morrow night or the next day. My own head-quarters will, for the present, be with Heintzelman's corps, or at this place.

“JOHN POPE,
“*Major-General Commanding.*

“GENERALS McDOWELL and PORTER.”

No order or information whatever was received by Gen. Porter from Gen. Pope after this order was received, until the delivery of what is known as the 4.30 order, late in the afternoon, or about sunset. Gen. Porter did not even know that Gen. Pope was not still at Centreville. He did not know that Gen. Pope had moved his headquarters to the immediate rear of Sigel, Reno, and Heintzelman, near the intersection of the Sudley road and Warrenton pike. We must, therefore, consider the conduct of Gen. Porter in the light of the joint order, and the circumstances as they existed on that morning, upon the receipt of that order, and as they developed during the interval between the receipt of that order and the 4.30 order.

The order I have just read is, I think, very obscure. It may be my want of military education which makes it seem so, but it certainly has been a source of great difficulty to me in my endeavor to understand it. The circumstances surrounding it, and surrounding Gen. Porter, were of such a character that I can understand the difficulty, even to him, must have been very great indeed. But we must endeavor to analyse this order, and try to find out what it does mean, and try to find out above all what it ought to have meant to Gen. Porter at the time he received it.

The directions contained in it are:—

1st. That they were to move with their joint commands towards Gainesville.

2d. That as Gens. Heintzelman, Sigel, and Reno were moving on the Warrenton pike, in the direction of Gainesville, and were then not far from it, communication must be established with that force, and then the whole command should halt.

3d. That the troops must occupy a position from which they could fall back behind Bull Run at Centreville that night, or by morning.

4th. That if any considerable advantages were to be gained by departing from this order, it would not be carried out.

5th. That Gen. McDowell should instruct Gen. Ricketts to join the other divisions of his corps as soon as practicable.

These are the literal directions contained in it. But it becomes necessary to look somewhat deeper, for the purpose of understanding what was intended to be conveyed to the mind of Gens. McDowell and Porter by this order, and the construction they were to put upon it. This can only be done by the light of the events immediately preceding its issue and the then known military situation.

But before referring to those events, I wish to call attention to one injunction which Gen. Pope deemed essential to impress upon Gens. McDowell and Porter, and which it was imperative upon those officers to consider in its bearing upon all their actions that day; for it was "to be departed from only in case considerable advantages were to be gained" thereby.

It is this:—Gen. Pope says “it may be necessary to fall back behind Bull Run at Centreville to-night.”

“One thing must be held in view—that the troops must occupy a position from which they can reach Bull Run by to-night, or by morning.”

“The indications are that the whole force of the enemy are moving in this direction at a pace that will bring them here by to-morrow night or the next day.”

Gen. Pope thus places above all else, the bearing in mind by these officers that the troops would probably be behind Bull Run that night, or next morning.

He next makes the enemy’s probable arrival in whole force at the least twelve hours after he contemplated that his own army would get behind Bull Run.

He thus arranges to have his army behind Bull Run, at Centreville, in time to take a proper defensive position before the enemy should be upon him.

It appears to me that he thus announces in his order that he aims to avoid a general engagement with the main force of the enemy—at all events not to have it till his forces get behind Bull Run.

Having this in mind, and having thus impressed his generals with this purpose to avoid a general battle, he directs that their forces shall move forward—that they shall form a line of battle—his generals to exercise a limited discretion in case of “greater advantages:” such as the destruction of Jackson by attack in flank and rear; or the formation of their line so as to reach Bull Run by night, or next morning; and such as the precautions necessary to avoid a general battle in case the main forces of the enemy should be found in their front, a fact which did prove to be true, though *apparently* unforeseen, and at least denied, by Gen. Pope.

With this light, and that shed by the facts as they knew them, Gen. McDowell and Gen. Porter considered that joint order; and each, after McDowell separated the forces, governed himself that afternoon, according to his best ability.

It is to be considered whether Gen. Porter after the separation acted honestly and properly according to his best judgment. But to proceed with the events prior to the issue of the joint order.

On the 27th, a portion of Heintzelman’s forces, under Hooker, had an encounter with Ewell, of Jackson’s command, near Bristow. It was then known that Jackson was somewhere between the Manassas and Gainesville road and the Warrentown pike, and that Longstreet was marching in the direction of Manassas through Thoroughfare Gap, to join Jackson, and was then within a short distance of the Gap. Gen. Pope had issued a general order, dated August 27th, directing Gen. McDowell, with Sigel, to move from Warrenton to Gainesville, and that Heintzelman and Reno should move to Greenwich, communicate with McDowell, and support him in his operations against the enemy. Porter had been also directed to push forward, as soon as relieved by Banks, in the direction of Greenwich and Gainesville.

Now this was intended, as I understand it, as a concentrating movement to press Jackson, and McDowell’s movement on the Warrenton pike to Gainesville was a most important constituent in that movement.

In pursuance of that order, McDowell issued his order of 11.30 P. M., August 27th, at Buckland Mills, to carry the directions of the general order into effect. McDowell's Defense, page 39.

This order of McDowell "directed the holding of the strong positions of Buckland Mills and Haymarket, with a support at Gainesville, so as to hold in check any force coming through either gap, while two of the divisions with Heintzelman and Reno should go against Jackson, in the direction of Manassas." This was communicated to Pope, as also "the information of the near approach of Longstreet." McDowell's Defense, page 44.

Next came the order to McDowell from Pope, Bristow Station, August 27th, 9 P. M., to march to Manassas. McDowell's Defense, page 40.

Then McDowell changed the disposition by order from Reynolds' camp, August 28th, ordering Ricketts to look out for Longstreet's coming through Thoroughfare Gap.

The order which was issued from Reynolds' camp is this:—

"HEADQUARTERS THIRD ARMY CORPS,
"REYNOLDS' CAMP, Aug. 28th, 1862.

"General Orders No. 10.

"1st. Major-Gen. Sigel will immediately march with his whole corps on Manassas Junction, his right resting on the Manassas Railroad.

"2d. Brig.-Gen. Reynolds will march on the turnpike immediately in rear of Gen. Sigel, and form his division on the left of Gen. Sigel, and march upon Manassas Junction.

"Brig.-Gen. King will follow immediately after Gen. Reynolds, and form his division on Gen. Reynolds' left, and direct his march upon Manassas Junction.

"4th. Brig.-Gen. Ricketts will follow Brig.-Gen. King, and march to Gainesville, and if, on arriving there, no indication shall appear of the approach of the enemy from Thoroughfare Gap, he will continue his march along the turnpike, form on the left of Gen. King, and march on Manassas Junction. He will be constantly on the lookout for an attack from the direction of Thoroughfare Gap, and, in case he is threatened, he will form his division to the left and march to resist it.

"The head-quarters of the corps will be at King's division.

"By command of Major-Gen. McDowell.

"(Signed) E. SCHRIVER,
Colonel and Chief of Staff."

That was followed by what is to be found on page 43 of Gen. McDowell's Defense. On the morning of the 28th, Capt. Leski sent Gen. McDowell the following message:—

"10.15 A. M.

"The enemy is advancing through the pass.

"W. LESKI,
Captain and A. C.

"Col. Wyndham will hold them as long as he can, and asks to be reinforced.

"(Signed) W. L."

Upon that Gen. McDowell sent Gen. Ricketts this message:—

“AUGUST 28th.

“Send a brigade and battery to Colonel Wyndham, and follow them up with your whole division.

“ED. SCHRIVER,
“Colonel and Chief of Staff.

“GEN. RICKETTS.”

This was shortly after ten o'clock in the morning. Under this order, Ricketts moved with his division to Thoroughfare Gap and remained until about sundown or dark of the 28th, when he retreated back to Manassas by way of Gainesville and Bristow from Longstreet's forces.

Unquestionably he was retreating from Thoroughfare Gap in consequence of the movement which was made by Longstreet's forces coming through the Gap and coming through Hopewell Gap, as has been described.

King's division was upon the Warrenton pike, between Groveton and Gainesville, and towards evening of the 28th had a very sharp engagement with a part of Jackson's forces. This division retired from the Warrenton pike after their fight on the night of the 28th, around to Manassas.

Early in the morning of the 29th, Gen. Gibbon, who commanded a brigade in King's division, went to Gen. Pope, told him of what had occurred the night before, that the absence of troops on Warrenton pike had left the way open for Lee's army to join Jackson, and he supposed he would send troops there if he had them. Gibbon, page 244 (N. R.).

Porter was moving to Centreville under order dated near Bull Run, August 29th, 3 A. M.

That order was:—

“HEADQUARTERS ARMY OF VIRGINIA,
“NEAR BULL RUN, August 29th, 1862, 3 A. M.

“Gen.:—McDowell has intercepted the retreat of Jackson; Sigel is immediately on the right of McDowell; Kearney and Hooker march to attack the enemy's rear at early dawn. Major-Gen. Pope directed you to move upon Centreville, at the first dawn of day, with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

“I am, general, very respectfully, your obedient servant,

“GEO. D. RUGGLES,
“Colonel and Chief of Staff.

“MAJOR-GEN. PORTER.”

That order Gen. Porter received about six o'clock in the morning, and he moved between six and seven.

While moving under this order, Gen. Porter met McDowell at the Weir House, near Manassas Junction. Then McDowell informed him of the position of matters, and especially of the retreat of King and

Ricketts the night before—that Ricketts was then near Bristow, on his way to Manassas. King's troops had already reached Manassas.

Gen. McDowell also stated that Longstreet was coming through Thoroughfare Gap to join Jackson, and that the then plan of the campaign was preparation to form behind Bull Run a line of this army, and of the reinforcements from the army of the Potomac, and not to bring on a general engagement until this was done. See Porter's Statement, page 32.

Porter moved on, and when two and one half miles beyond Manassas, in the direction of Centreville, he met Capt. Piatt, who gave him a verbal order to move to Gainesville and take King with him.

The point at which Gen. Porter received this message through Capt. Piatt was about six to seven miles from Bristow, in the direction of Centreville.

Piatt went on to McDowell to inform him that King's division was ordered to move back to Gainesville with Porter.

I suppose that this order to Gen. Porter to take King's division and move to Gainesville was, in point of fact, sent to Gen. McDowell, in order to inform him that King's division had been assigned to Gen. Porter, and that it was after and in consequence of the visit paid by Gen. Gibbon to Gen. Pope; and that Piatt, on his way to see Gen. McDowell, had reached Porter before Gibbon reached Porter with the written order; and that, meeting Gen. Porter, Piatt informed him of the message which he was taking to Gen. McDowell. This is sustained by the testimony of Capt. Piatt, which has been taken by deposition, and which was read to you. I think Mr. Maltby referred to that portion of it. At any rate, it will be found in his testimony.

When Gen. McDowell received this message through Capt. Piatt, that King's division had been assigned to Porter, Gen. McDowell sent a note to Gen. Pope, requesting that King's division of his corps be not turned over to Porter, but that he be allowed to conduct it himself.

Gen. Pope says (page 14, O. R.):—

“An hour and a half later, I received a note from Gen. McDowell, whom I had not been able to find until that hour in the morning, requesting that King's division of his corps be not turned over to Gen. Porter, but that he be allowed to conduct it himself. I then sent a joint order to Gens. Porter and McDowell, directed to them at Manassas Junction, &c.”

Then again, on page 29, Gen. Pope says:—

“Answer. I received a note from Gen. McDowell, about the time, I think, that Dr. Abbott came to me from Gen. Porter, in which Gen. McDowell referred to the order which I had sent to Gen. Porter, to which reference is made in the joint orders to Gens. Porter and McDowell, and asked that King's division may be returned to him and not assigned to the command of Gen. Porter. It was in consideration of Gen. McDowell's request, and perhaps somewhat due to the request for a written order that I had received from Gen. Porter, though I did not remember it at the time I answered, that this joint order was written, which relieved King's division from service with Porter's corps.”

What I wish, at this point, to impress upon the minds of the Board, is that Gen. McDowell, upon receiving information that King's di-

vision had been assigned to Gen. Porter, immediately sent a note to Gen. Pope, remonstrating against the turning of King's division over to Porter, and asking that it be returned to him, and that Gen. Pope's compliance with that request was to be found in the joint order which we are now considering. It will be seen, I think, as we progress, that each one of these facts becomes important in considering the effect of the joint order and the position of Gen. Porter in reference to it, as well as that of Gen. McDowell.

Gen. Porter, after receiving the order through Piatt, faced his command about and moved it back towards Gainesville, on the Manassas and Gainesville road.

Porter then dismounted and wrote a message to Pope, which he sent by Dr. Abbott. Abbott, page 65 (O. R.)

This message, on the part of Porter, to Gen. Pope, which was sent by Dr. Abbott, gave Gen. Pope full information as to King's and Ricketts' divisions, as communicated to Gen. Porter by Gen. McDowell. In other words, when Gen. Porter found that he was marching back in the direction of Gainesville; and had obtained the information from Gen. McDowell, to which I have referred, with reference to the then condition of affairs; namely, that King and Ricketts had retreated from the important points at which they had been placed the day before; that Thoroughfare Gap was left open; and that Longstreet's force, without any difficulty, could come through, he immediately communicated it to Gen. Pope; and in doing so, he did that which, I suppose, it would have been the duty of any officer who had the cause in which he was engaged at heart, to do, with alacrity. At the same time he informed him that he had that morning received several verbal orders from him, rather contradictory in their nature, and that though the verbal order by Piatt was contrary to the written one under which he was then moving to Centreville, he obeyed it as the proper one under existing circumstances; but asked, in order to avoid any mistake in the understanding of orders, that Gen. Pope would in future put his orders in writing.

This message having been sent by Gen. Porter to Gen. Pope by Dr. Abbott, Gen. Porter then rode back towards Manassas and again saw McDowell at the Weir House, and then McDowell requested him to place King on his right, so that he would have his command together when the forces were united, it being understood that Reynolds was to be on the left of the forces on Porter's right. Gibbon, page 245 (N. R.)

Gibbon delivered to Porter the written order referred to. Gibbon, page 259 (N. R.)

That order, which was sent to Gen. Porter through Gen. Gibbon, is in these words:

“ HEADQUARTERS ARMY OF VIRGINIA,
“ CENTREVILLE, August 29th, 1862.

“ Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton pike. Be expeditious, or we shall lose much.

“ JOHN POPE,
“ Maj.-Gen. Commanding.”

Gen. Porter had been informed that the plan of the day before was to intercept the retreat of Jackson and to interpose between Longstreet and Jackson before Longstreet could get up, and that this plan had been partially thwarted by the retreat of Ricketts and King on the night before. He was also informed of the fact that Longstreet was coming through Thoroughfare Gap.

Porter moved on in the direction of Gainesville with his own corps and King's division until he reached Dawkin's Branch, where he met the enemy about 11.30 A. M. coming from Gainesville.

He had captured some rebel scouts, and from them, from the knowledge he had of Longstreet's position of the night before, from the distance to Thoroughfare Gap of about nine miles, and from the dust rising above the trees, he had every reason for believing that it was Longstreet's force which confronted him.

Skirmishers were thrown out. Butterfield's brigade was ordered to move forward and seize a commanding position, so as to cover the deployment of the troops while getting into position for an engagement; Morell's division was ordered to deploy in line of battle; Sykes' division was also being brought forward for the same purpose, and King's division was following.

These movements were in progress under the order to which I have referred, that Gen. Porter received in the morning through Captain Piatt, and subsequently in writing through Gen. Gibbon. These movements were in progress, all looking to a forward movement and an attack upon the enemy, when Dr. Abbott arrived with the joint order. It is to be observed that this joint order was returned to Porter by the same messenger who had taken Porter's note to Pope, informing him of Ricketts' and King's retreat, and of the situation as he had derived it from McDowell. Abbott, page 264 (O. R.).

This is a short summary of the facts in the light of which that order was read and construed by Porter.

From the terms of this order, and with the aid to be thus derived from previous events and the then known situation of affairs, it appears that its purpose was to intercept the retreat of Jackson, and to interpose the troops of McDowell and Porter (referred to) between Longstreet and Jackson, at or near Gainesville, before Longstreet could effect the junction with Jackson, and as a part of the proposed concentration—the ultimate end of which was the crushing and capture of Jackson.

Thus far it was but a duplication in purpose of the previous orders sent to Gen. Porter; that is, I mean, of the order sent by Piatt to take King's division and move to Gainesville, and by Gen. Gibbon to do the same thing. But there were two qualifications annexed to the joint order that did not appear in the other.

The first qualification was, that as soon as communication was established with Heintzelman, Reno, and Sigel, the whole command should halt.

The second, that the troops must occupy a position from which they could reach Bull Run that night or the next morning.

The order went further: It added Ricketts' division to the force already under Porter's command, and placed Gen. McDowell in a position to act conjointly with Porter; and it, further than that, conferred the

right to depart from the order, in case considerable advantages were to be derived from so doing.

That, I think, is about the substance of that order as near as I can get at it. As I have said, it is an exceedingly complex and obscure, and, I think, difficult order. It has not been my fortune to have had much experience in such matters, but I should think that if there is any one thing that ought to be taught in military affairs, it is that orders should be simple in their character, plain, and easily understood, especially where that which is to be done under them is to concern so largely an army and a country, and where those who are to execute them have to decide quickly and promptly as to what is to be done. It seems to me that it is a case in which of all others simplicity should be the rule. I can not see anything simple in this order. It is complex, it is obscure, it is difficult. I can imagine that any man who was acting under it might have found himself involved in difficulties, no matter what step he took in reference to it, and that great liberality should be exercised in judging of the conduct of an officer who was to be guided by it.

The view which I have given of this order, it seems to me, is sustained by:—

1st. The testimony of Gen. McDowell, "That the plan of the previous day under which he was acting, and which was partially thwarted by the mistake of the night before, on the part of certain division commanders, was that this concentration should have been effected against Jackson, for the purpose of pressing him before the arrival of Longstreet." McDowell, page 829 (N. R.).

2d. The verbal order of Pope to Porter, sent by Piatt on the morning of the 29th, to march to Gainesville and take King with him, thus following this plan and seeking to retrieve its partial failure. Page 14 (O. R.).

3d. The written order delivered by Gibbon to Porter, to push forward to Gainesville, and take King's division with him. See order, Porter's statement, page 27.

4th. The statement of Gibbon, that the object of the order was to interpose these forces between Longstreet and Jackson, and thus prevent their junction, the importance of this being the substance of what he had communicated to Pope. Gibbon, 259 (N. R.).

5th. By Gen. Pope's evidence that "Their (King's) withdrawal to Manassas Junction, I feared had left open Jackson's retreat in the direction of Thoroughfare Gap, to which point the main portion of the army of Lee was then tending to reinforce him," as a reason for issuing the joint order. Page 14 (O. R.). (See, also, Pope's Ev., page 34, O. R.)

6th. That portion of the joint order itself, in which McDowell and Porter are directed to move upon Gainesville with their joint commands, and in which they are informed that Heintzelman, Sigel, and Reno were moving on the same point by Warrenton pike, and that no orders had been sent to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except those sent to McDowell the night before, which were to hold his position on the Warrenton pike until the troops moving down the Warrenton pike should fall on the enemy's *flank* and *rear*, and that the indications were that the whole force of the

enemy was moving at a pace that would bring them on the field by "*to-morrow night or the next day.*"

Now, if these premises are correct, this movement would seem to have been a most wise, skillful, and judicious one, and probably it was—at any rate I suppose it was.

But just at this point I want to call attention to that which seems to me to be most extraordinary. The joint order says that the indications were that the whole force of the enemy was moving at a pace that would bring them "*here by to-morrow night or the next day.*" The Gibbon order was issued with the understanding that Longstreet was pressing through Thoroughfare Gap; and Porter's movement was in part to prevent his junction with Jackson. We know that the whole purpose of this joint order, as I have undertaken to show, at least the great purpose to be accomplished by it, as well as that of the order issued prior to it, upon which it was founded, was to prevent Longstreet from joining with Jackson, and that this joint order was issued in consequence of the information which Porter had given to Gen. Pope that Ricketts had retreated from Thoroughfare Gap that morning; and that was one of the reasons why Ricketts was added to Porter's force, and why Gen. Pope determined to send Gen. Porter and King and Ricketts' division, amounting to some twenty-five thousand or twenty-seven thousand men, back again to take the place which had been vacated by Gen. Ricketts' and Gen. King's retreat of the night before, for the purpose of intercepting and preventing the movement of Longstreet along the Warrenton pike, and his union with Jackson.

Gen. Pope knew, at the time he issued that joint order, that Ricketts had been driven from Thoroughfare Gap by Longstreet's forces, and that he was sending this force there for the purpose of intercepting and preventing this junction being made between Longstreet and Jackson. And yet he says that the indications were that the whole force of the enemy was moving at a pace that would bring them "*here by to-morrow night or the next day.*" In other words, the commanding general, with a knowledge that the enemy were within nine miles of the point at which his forces were confronting Jackson, and that Ricketts' division had been driven from Thoroughfare Gap on the night of the 28th, and that the line of march by Longstreet was unimpeded, makes the extraordinary statement, in the joint order, that the indications were, that the whole force of the enemy was moving at a pace that would bring them on the field by the night of the next day or upon the following day.

Now, I say that Gen. Pope knew that Longstreet's forces were in a position so that they could reach the field during the day of the 29th; and that he knew it at the time he stated in this order that they would not reach there until the next night or the following morning.

And here let me call your attention to his own testimony. He says, on page 33 of the Court-Martial Record:—

"I had feared the junction of those corps at any moment, as I knew from information that Longstreet was pushing forward to join Jackson I therefore expected that movement of Longstreet certainly during the afternoon of the 29th."

That Gen. Pope had this knowledge, that he knew on the 27th that Longstreet's forces were at White Plains, which is within four or five miles of Thoroughfare Gap, there is abundant testimony in this record. His own reports show it. He knew that the whole force of Longstreet or of Lee—the main force, under whatever name—were within a day's march of Thoroughfare Gap upon the 27th; he knew that upon the 28th they were at Thoroughfare Gap; and if his mind was in a condition to understand anything, he must have known on the 29th at ten o'clock when he wrote the joint order that Longstreet's forces early that morning were within from nine to ten miles of Groveton, at the place which is called the field of battle, because he knew that Ricketts' division had been driven from that point by those forces on the night of the 28th.

Now, I say that this is a most extraordinary phase of this whole affair; here is a commanding officer giving an important command to subordinates, sending them upon a mission of the first importance, putting under their command twenty-five to twenty-seven thousand men for the purpose of discharging a duty upon the result of which the fate of his own army, and possibly the fate of his government, may depend, with a knowledge that the main force of the enemy is within an easy half-day's march of him, and yet telling his subordinates that this force would not come upon the field until the night of the next day, or upon the following day. Is it fair to hold a subordinate officer responsible for non-performance of duty under an order so inconsistent with known facts as this was?

Porter's and McDowell's commands, from the moment that order reached them, were marching to a common point, with a common purpose, which was to be effected by them conjointly. They were doing duty together. That purpose was to re-assume the positions vacated by Ricketts and King on the night before and retrieve the vantage-ground which had been thus lost. By this means the plan of concentration of the day before was to be restored, and Jackson was to be pressed, and Longstreet prevented from joining him.

It should be borne in mind, also, that the forces of King and Ricketts numbered about fifteen to seventeen thousand men, and as they had been driven from their positions, it must be assumed that Gen. Pope intended, by uniting them to Porter's corps, to make the force strong enough to effect his purpose.

The joint order, taken together with the facts to which I have referred, shows that Gen. Pope regarded this as a most important movement, and that he proposed to guard against the mischance of the night before by providing a larger force, and one quite sufficient to accomplish the objects of the movement.

Again, I do not find anything in the joint order that favors the idea, in any way, of a separation of these two commands while performing the duty assigned to them. But I do find that which shows that Gen. Pope contemplated that they might not be able to accomplish the object of the movement; that circumstances might arise which would render it impracticable. In that event the discretion given to depart from it, if considerable advantages were to be gained by so doing, would spring into existence.

The construction which I have given to this joint order is one that may be unsatisfactory to the Board. I do not know how far it accords with the views which they entertain of it. It is the best translation which I have been able to make, and I think it requires a process of translation to arrive at what it does mean.

Having thus stated the occurrences of the 29th, which preceded the delivery of the joint order to Gen. Porter, I now propose to call your attention to what took place subsequently on that day, as bearing upon Gen. Porter's conduct under the operation of the joint order.

ACTS OF GEN. PORTER, AND THE DISPATCHES DURING THE AFTER-NOON OF AUGUST 29TH, 1862.

It appears to me important in considering the accusations against Gen. Porter, with respect to the joint order, that his acts should be reviewed from the time it was received by him, until the close of the day. For this purpose, I propose also to explain the bearing and to show the connection of the dispatches of the afternoon of August 29th, which were given in evidence on the trial before the court-martial, and those which were produced by Gen. Morell and by Gen. McDowell in the recent examinations before this Board, together with what was done during that time.

I have already called attention to the preparations made by Gen. Porter immediately upon coming in contact with the enemy on or near Dawkins' Branch. I have also called attention to the fact that while these movements were in progress, the joint order was delivered to him by Dr. Abbott.

Immediately afterwards, and while the troops were still in motion in pursuance of these directions, Gen. McDowell came up to the front with a duplicate of the joint order in his possession, and, under its authority, the command of the joint forces devolved upon him as senior in rank.

At this moment, Morell's division had come up and was largely deployed. Sykes was coming up, and King's division was immediately in rear of Sykes on the road from Manassas.

Immediately on arrival, Gen. McDowell exclaimed (O. R., pp. 135 and 141, and N. R., pp. 391 and 410), "Porter, you are too far out already; this is no place to fight a battle." This expression of opinion Porter interpreted, from the tenor of the "joint order" (then in his possession) and from his previous interviews with McDowell at Manassas, to mean that the command was then too far in advance of Bull Run and of the supports coming to the army, and was not in proper position in relation to the other parts of the army, to bring on such an engagement as must ensue from their continued joint movement.

All preparations and movements to advance at once ceased.

In order to convince Porter that Longstreet, or the main forces of the enemy hastening to the relief of Jackson, had made connection with him and was then practically in Porter's front, Gen. McDowell showed Porter this dispatch:—

"HEAD-QUARTERS CAVALRY BRIGADE, 9.30 A. M.

"Seventeen regiments, one battery, and five hundred cavalry passed through Gainesville, three-quarters of an hour ago, on the Centreville

road. I think this division should join our forces now engaged at once. Please forward this.

“JOHN BUFORD,
Brigadier-General.”

“GENERAL RICKETTS.”

It was then known to both Generals McDowell and Porter that the force named by Gen. Buford was the advance division of the forces which Gen. Pope had declared in the “joint order” he expected “by to-morrow night or the next day.”

Gen. McDowell and Porter together rode through the woods to their right and to the rear of the line of battle of Morell, until they crossed the Manassas Gap Railroad. Their object was to see if King’s division could be passed through the woods under cover from the sight of the enemy, and be made to connect Porter’s right with the left of Reynolds of McDowell’s corps, then near Groveton.

Gen. McDowell, finding he could not get King’s division through the woods, turned suddenly back and rode rapidly to the rear along the railroad. To a call from Porter, “What shall I do?” he replied only by a wave of the hand.

Porter turned to go back to his command, and as he crossed the railroad, or at some point on his ride back, he discovered some movement of the enemy in his front, down the railroad, which led him to determine to make the attack or forward movement which had been brought to a stand by McDowell’s coming up and telling Porter “he was too far out; this is no place to fight a battle.” He was satisfied that to make it effectively he must have King’s division with him.

To carry this purpose into effect, he determined to hold on to King’s division, if he could do so, and dispatched Locke to King for that purpose.

Porter hoped to be able to hold on to King, intending to use him as a reserve in support of his movement, and to call him up as the deployment and advance of the corps permitted.

Porter had never been on that road or in that vicinity before, and knew nothing of the character of the woods to his right. Its depth, its density, and the roads or paths through it were all unknown to him, except at the point near the railroad examined by him and McDowell, at least a quarter of a mile in rear of the line of formation of Morell. There the woods were impenetrable for artillery and impracticable for infantry in any regular order.

At this time and throughout the afternoon, Porter sent mounted messengers through the woods to communicate with the forces of McDowell and Sigel, and to ascertain the practicability of passing through the woods separating him from them. The dispatches, soon to be quoted, show that such of the messengers as returned to him represented the woods as impassable and the inability of uniting with those forces except by the Sudley Springs road up which McDowell carried King.

In pursuance of his intention to advance, Porter immediately ordered Morell to move his division over to the right, and in part across the railroad, and deploy in line of battle, and directed Sykes to move up and deploy on the left of Morell.

Thus the line of battle would be formed at right angles with the general direction of the railroad and the Manassas and Gainesville dirt-road, and upon and across those roads, with King in reserve and in support along the Manassas and Gainesville dirt-road.

He proposed then to move across Dawkins' Branch, and attack the force which he knew was then in his front, and which he supposed to be gathering with increasing force. He also intended, if possible, that Morell's right should connect or communicate with Reynolds on the right, if that should be found feasible, and it was at this time he commenced sending mounted messengers to the troops at Groveton.

This movement by Morell and Sykes was in part made, and was being rapidly continued, when Col. Locke returned and delivered this message from Gen. McDowell, whom he had found at the head of King's division: "Give my compliments to Gen. Porter, and say to him I am going to the right, and will take King with me. I think he had better remain where he is; but, if necessary to fall back, he can do so on my left." (O. R., page 135.)

Porter was convinced that it would be disastrous to make the movement with his own corps alone, and that he would be culpable to attempt it, especially in view of the course taken by Gen. McDowell and his reasons therefor. Hence, on receipt of McDowell's message, he at once recalled Morell to his position south of the railroad, and while Morell was taking his position, artillery opened upon him.

This movement is described by General Morell as follows:—

"After a while I saw Gen. McDowell and Gen. Porter riding together; they passed off to our right into the woods toward the railroad and after a time Gen. Porter returned, and I think, alone, and gave me orders to move my command to the right, over the railroad; I started then and got one brigade, and, I think, one battery over the railroad, passing through a clearing (a cornfield), and had got to the edge of the woods on the other side of it, when I received orders to return to my former position; I led the men back, and as the head of the column was in front of Hazlitt's battery, which had been put in position, we received a shot from the enemy's artillery directly in front of us." (O. R., page 146.)

It is described by Gen. Griffin as follows:—

"After the conversation, Gen. McDowell rode to the right; I received an order almost directly after Gen. McDowell had left to recall my pickets and orders to move my command to the right; I attempted to go to the right, and moved probably six hundred yards, until with the head of my column I crossed a railroad said to run to Gainesville; here we met with obstructions which we could not get through; it was reported by somebody, I cannot say who, 'You cannot get through there;' we then faced about and moved back to the hill where the battery I first referred to was stationed; as we were getting to this hill the enemy's batteries opened upon us; my brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing; I can not say how long." (O. R., page 162.)

The movement to the right, as above described, was in the wood skirting the ridge on Dawkins' Branch, upon which Morell's troops were deployed when they first halted. It was not intended by Gen. Porter to thrust his corps in over that broken cleared ground to his right and front and between Jackson's right and the separate enemy massing in his front, as Gen. McDowell claimed in his evidence before the court-martial, he directed him to do. That, in the judgment of Gen. Porter, would have been "a fatal military blunder," and could have resulted in nothing but disaster. That opinion he expressed in his defence before the court-martial, and subsequent developments have only confirmed it.

His purpose was with Griffin's brigade of Morell's division (the largest of the three), slightly refused north of the railroad, to secure the right flank, and perhaps connect or, at least, communicate with Reynolds, to attack the enemy then in his front with the remainder of his corps supported by King, who could rapidly be brought up immediately south of the Manassas-Gainesville road, and formed to assist the centre and left of the line.

Having recalled Morell to the ridge which he occupied when Gen. McDowell left him, and having seen his command posted to resist attack, and having Sykes immediately in rear along the Manassas Gainesville dirt road reaching from Morell's line back to Bethlehem Church, and thus supporting Morell, Porter took his position at the rear of Sykes' troops, at Bethlehem Church, near the junction of the Gainesville and Sudley Springs road, this point being the most suitable from which to control his command and quickly communicate with Gen. McDowell, the latter having taken the Sudley Springs road to Bull Run and Groveton.

In these relative positions Porter's command remained till called away the next morning by Gen. Pope's orders. Such changes as were made will be noticed hereafter. But they did not alter the relative positions in any material respect.

These movements, probably, required until about three o'clock.

Shortly after this Gen. Porter took his position at Bethlehem Church, and the following dispatches passed between Gen. Morell and himself:—

[No. 30.]

"GENERAL :

"Colonel Marshall reports that two batteries have come down in the woods on our right towards the railroad, and two regiments of infantry on the road. If this be so, it will be *hot* here in the morning.

"GEO. W. MORELL,
Major-General."

Endorsed as follows:—

"Move the infantry and everything behind the crest, and conceal the guns. We must hold that place and make it too hot for them. Come the same game over them they do over us, and get your men out of sight.

F. J. PORTER."

[No. 31.]

“GENERAL PORTER:

“I can move everything out of sight except Hazlitt's battery. Griffin is supporting it, and is on its right, principally in the pine bushes. The other batteries and brigades are retired out of sight. Is this what you mean by everything?

“GEO. W. MORELL,
Major-General.”

Endorsed as follows:—

“GENERAL MORELL:

“I think you can move Hazlitt's, or the most of it, and post him in the bushes with the others so as to deceive. I would get everything if possible in ambuscade. All goes well with the other troops.

F. J. P.”

General Morell says, describing the movement directed to be made by General Porter in the endorsements upon the dispatches above set out:—

“I got the infantry back of the batteries under cover of the bushes and the crest of the ridge, and posted Waterman's battery on the opposite side of the Gainesville road, and we remained in that position the most of the day. (146, O. R.)

It will be remembered that there was heavy artillery firing in the vicinity of Groveton about the time of the movements already described. Later, and probably between three and four o'clock, this firing lulled, and then broke out with increased vigor over to the north-east, in the direction of Sudley and toward Bull Run.

This change in the artillery firing led Gen. Porter to suppose that the main army was retiring in the direction of Bull Run.

It is to be borne in mind, also, that the joint order stated that—

“It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies.”

And again, “one thing must be held in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning.” (See joint order, *ante*, page .) The terms in which these injunctions were conveyed gave them paramount importance, and compelled Porter to watch most anxiously for any movement that indicated the necessity on his part to comply with their directions.

The fire thus apparently retiring led him to suppose that purpose was being carried into effect, and it was then the following dispatch was sent (O. R., page 31):—

No. 29.

“GENS. McDOWELL AND KING :

“I found it impossible to communicate by crossing the woods to Groveton. The enemy are in great force on this road, and as they appear to have driven our forces back, the fire of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messages have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going, and I will communicate with you. Had you not better send your train back?

“F. J. PORTER,
“Major-Gen.”

Gen. Heintzelman's diary recites the substance of this dispatch, and shows it was received by Gen. Pope at forty-five minutes past five.

The following dispatch is but a duplicate of the foregoing. Gen. Porter sent the duplicate by another messenger, so that in case the one should not reach its destination the other would do so:—

Newly produced by Gen. McDowell. (Page 810, N. R.)

“GEN. McDOWELL :

“The firing on my right has so far retired that as I can not advance, and have failed to get over to you, except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate, please do so. I have sent many messengers to you and Gen. Sigel, and get nothing.

“(Signed,)
“F. J. PORTER,
“Major-Gen.”

“An artillery duel is going on now—been skirmishing for a long time.

“F. J. P.”

This dispatch, or another one of the same family, not yet produced, was seen by Gen. Sullivan, and is described by him. (P. 99, 100, 101, N. R.)

In pursuance of the purpose expressed in these dispatches, Porter sent to Morell the following order (N. R., page 423):—

[No. 28.]

“AUGUST 29th, 1862.

“GEN. MORELL :

“Push over to the aid of Sigel and strike in his rear. If you reach a road up which King is moving, and he has got ahead of you, let him pass, but see if you can not give help to Sigel. If you find him retreating, move back towards Manassas, and should necessity require it, and you do not hear from me, push to Centreville. If you find the direct

road filled, take the one via Union Mills, which is to the right as you return.

“ F. J. PORTER,
“ *Major Gen.*”

“ Look to the points of the compass for Manassas.”

It is not possible now to determine with absolute certainty the route by which Gen. Porter expected Gen. Morell to move under this order. For it should be borne in mind that Gen. Porter had not explored, except with mounted messengers, the woods north of the railroad, and knew nothing of their character, except at the point visited by Gen. McDowell and himself, and also that at which Gen. Morell had attempted to move through in his proposed deployment to the right.

It is evident he intended Morell should move concealed through the woods in the rear of the line then formed, and it is probable he supposed Gen. Morell might move back on or near the railroad, until he reached some point at which he might cross over towards the Warrenton Pike.

Whatever may have been the route he contemplated that Morell should take, it would seem that this order could only have been given in furtherance of the intention to withdraw as indicated in the above dispatches ; yet it is manifest it was given for the purpose of aiding the other troops, and provided for a withdrawal from the field only in contemplation of the fact that the troops on the right were falling back.

But soon, finding he was mistaken as to the main army retiring, and feeling the importance of holding his then strong position, and before anything was done by Morell in execution of the order, he sent him the following (N. R., page 424) :—

[No. 33.]

“ GEN. MORELL :

“ Hold on, if you can, to your present place. What is passing ?
“ F. J. PORTER.”

[No. 32.]

“ GEN. MORELL :

“ Tell me what is passing, quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.
“ F. J. PORTER,
“ *Major-Gen.*”

The dispatch sent by the hands of Lieut. Weld and delivered to Gen. Pope, about five o'clock, now comes in as one of the missing links, not yet produced by Gen. Pope.

Lieutenant Weld testified (O. R., p. 129) :—

“ I was sent with a message, sent to Gen. Pope, but to be delivered to either Gen. McDowell or Gen. King. I first received a written message, and then Gen. Porter gave me a verbal message to the effect that Gen. Morell would now be strongly engaged ; that there was a large force in front of us ; that large clouds of dust were seen there, &c. I also glanced over the written message, and it was to the same effect, but much more minutely, with details of which I do not now remember.”

The Recorder has asserted that this dispatch was No. 29, the one addressed jointly to Gens. McDowell and King. But he must have forgotten that Lieutenant Weld testified:—

“I do not think that is the one (the joint dispatch to McDowell and King had just been shown the witness). *The one I took, Gen. Pope put in his vest pocket.*” (Page 131, O. R.)

I do not wish to exaggerate the importance of this dispatch or the wrong done Gen. Porter by the failure of Gen. Pope to produce it. And yet it is quite manifest, that if produced, it could but aid most materially in clearing up any seeming obscurity that may hang over the transactions of that afternoon. The hour at which it was written, its tenor and subjects as remembered by Weld, and the fact that it was from Porter to his commander-in-chief, warrant the belief that if produced, it would tend in the strongest manner to negative the accusation of bad faith or misconduct on the part of Gen. Porter. Those details which Weld could not remember, would probably shed a flood of light not only upon Porter's conduct at that time, but also upon the motives and conduct of Gen. Pope in the course he pursued upon that day and subsequently in reference to Gen. Porter.

After Lieut. Weld's departure to Gen. Pope, Major Earle, of Gen. Morell's staff, delivered to Porter dispatch No. 34, endorsed with No. 35. These are described by Gen. Morell and Major Earle in their testimony (N. R., pages 410-11-12, 427-28-29).

[No. 34.]

“GEN. MORELL:—

“The enemy must be in a much larger force than I can see, from the commands of the officers, I should judge a brigade. They are endeavoring to come in on our left, and have been advancing. Have also heard the noise on left as the movement of artillery. Their advance is quite close.

“E. G. MARSHALL,
“Col. 13th N. Y.”

[No. 35.]

“GEN. PORTER:—

“Col. Marshall reports a movement in front of his left. I think we had better retire. No infantry in sight, and I am continuing the movement. Stay where you are to aid me if necessary.

“MORELL.”

In response to dispatch No. 35 the following was sent by an orderly, and while on its way to Morell, it, or another of the same purport, was read by Gen. Warren, who at once dispatched to Gen. Sykes as below:—

[No. 36.]

“Gen. MORELL:—

“I have all within reach of you. I wish you to give the enemy a good shelling without wasting ammunition, and push at the same time a

party over to see what is going on. We can not retire while McDowell holds his own.

“ F. J. P.”

“ 5 h., 45 m. P. M., Aug. 29, '62.

“ GEN. SYKES:—

“ I received an order from Mr. Cutting to advance and support Morell. I faced about, and did so. I soon met Griffin's brigade, withdrawing by order of Gen. Morell, who was not pushed out, but retiring. I faced about and marched back 200 yards or so. I met then an orderly from Gen. Porter to Gen. Morell, saying he must push on and press the enemy; that all was going well for us, and he was retiring. Griffin then faced about; and I am following him to support Gen. Morell, as ordered. None of the batteries are closed up to me.

“ Respectfully, G. K. WARREN.”

Gen. Warren explains his dispatch (pages 19 and 20, N. R.). It shows from its date, 5.45 P. M., about the hour which these dispatches were received and sent back.

Immediately following No. 36, dispatch No. 37 was sent by the hands of Major Earle. Both Gen. Morell and Major Earle explain why the attack was not made under this order No. 37 (N. R. pages 410-11-12-27-28-29).

[No. 37.]

“ August 29th.

“ GEN. MORELL:—

“ I wish you to push up two regiments supported by two others, preceded by skirmishers, the regiments at intervals of two hundred yards, and attack the section of artillery opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling as our troops advance.

F. J. PORTER,
Major-Gen. Commanding.”

General Morell, believing this attack would bring on a disastrous repulse followed by a strong pursuit, commenced putting all his command in his front line and urged Porter, in consequence of the great strength of the enemy, not to make it. During the delay of this preparation, Porter became satisfied that Morell was right, and that by holding the enemy before him, he was producing all the good effects of a battle and would get none of its evils.

Hence, as the day was nearly ended—then sunset—Porter suspended the attack by the following order, which put the troops in position for any service that might be required after the return of Lieut. Weld from Gen. Pope (O. R., p. 153):—

[No. 38.]

“ GENERAL MORELL:

“ Put your men in position to remain during the night, and have out your pickets. Put them so that they will be in position to resist anything. I am about a mile from you. McDowell says all goes well, and

we are getting the best of the fight. I wish you would send me a dozen men from the cavalry. Keep me informed. Troops are passing up to Gainesville, pushing the enemy; Ricketts has gone, also King.

“F. J. PORTER,
“Major-General.”

This dispatch was sent to Morell before the 4.30 order was received by Porter. It therefore necessarily preceded the sending of Col. Locke to Morell with the message to make the attack hereafter described. This message by Locke was sent in consequence of the receipt of the 4.30 order by Porter. But it appears that Col. Locke had reached Morell and delivered his message in advance of the person who carried dispatch No. 38 (O. R., p. 158).

About this time Gen. Porter sent the following:

Newly produced by McDowell (N. R., p. 810):

“Gen. McDowell or King—I have been wandering over the woods, and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

“(Signed) F. J. PORTER,
“Major-General Volunteers.”

Newly produced by McDowell (N. R., page 810):—

“General McDowell,—Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded yet. From the masses of dust on our left and from reports of scouts think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs whether you retire or not. I can not get water, and am out of provisions. Have lost a few men from infantry firing.

“F. J. PORTER,
“Major-General Volunteers.”

“Aug. 29th, 6 P. M.”

The two dispatches last set out are evidently duplicates of each other. They were sent by different messengers, and probably by different routes, so as to secure that one of them should reach the intended destination. It is quite evident that they intended to describe, in short, the movement of Morell over to the right, the inability to communicate, the moving of the enemy on his right, also their movement on the left, stated by Marshall in No. 34, and to ask for such information as would enable Porter to determine what he should do for the night, which

was then approaching. It is a mistake to suppose that these dispatches intended to describe only the events occurring immediately before their date (6 P. M.) They run hurriedly over the events of the afternoon, beginning with the time of the separation of McDowell from Porter, and coming down to 6 P. M., so as to give an idea of the situation at that time.

These dispatches contain intrinsic evidence that they were written before Gen. Porter had received the 4.30 order. The language found in them could not have been used by Porter if he had already received the order to attack, as contained in the 4.30 order.

They are produced by Gen. McDowell on this hearing, for the first time, and furnish the strongest confirmation that the 4.30 order was not delivered to Gen. Porter until after 6 P. M., the date of the last dispatch.

That this 4.30 order was not received till a later hour—or after sunset, as Gen. Porter has always asserted—is evident also from the words of dispatch No. 38 to Morell. That dispatch shows that Gen. Porter had received some information of the movement upon Groveton, of King's division under Hatch, which, as we know, did not take place till after 6 P. M., and that Gen. McDowell was expecting great results from the pursuit of the supposed fleeing foe.

Dispatch 38 was sent prior to the receipt of the 4.30 order; but in consequence of its having been delivered to Morell after the arrival of Colonel Locke with the 4.30 order, an erroneous impression was created that the order No. 38, "to post his men for the night" was written after the one sent by Locke, to attack *with his division*. This fact and the fact that Morell believed until this hearing, that the order No. 37 was issued on receipt of the 4.30 order, has caused much confusion as to the facts to which this part of his evidence before the court-martial relates.

It was this confusion which afforded the Judge Advocate occasion in his review to state that "Colonel Locke states that soon after the receipt of the order from Gen. Pope, he bore one from the accused to Gen. Morell, directing him to engage the enemy, which, as appears from the statement of Col. Marshall, was to be done with but four regiments; but Gen. Morell testified that before there was time to carry this order into execution—say within about half an hour after its receipt—it was countermanded by another, directing him to pass the night with his troops where he was. This was all that was done towards attacking the enemy."

That the Judge Advocate and the court-martial were led into error on this point is now made manifest by the evidence of Gen. Morell (pp. 427-28-29, N. R.) and of Maj. Earle (pp. 410-11-12, N. R.) and of Col. Locke (p. 223, O. R.)

They prove conclusively that the order to attack with four regiments was given before the 4.30 order was received by Gen. Porter, and they also explain, when their testimony is taken in connection with that of Col. Locke, how the misapprehension arose.

The order to attack with four regiments was sent by Maj. Earle, and delivered by him. The order to post his men for the night was sent to Morell by another messenger. The order to attack "with his division," in pursuance of the 4.30 order, was sent by Locke after this, but reached Morell before the order to post his troops for the night was delivered.

But Gen. Morell supposed it to be a countermand of the last order sent by Locke, instead of the previous one sent by Earle.

It was not until he heard the statement of Maj. Earle at West Point on this hearing, in connection with an examination of Locke's testimony before the court-martial (p. 223, O. R.), that he was able to clear up the confusion into which he had fallen.

After the occurrences to which I have referred, and certainly after sunset, Gen. Porter received the following order:—

[No. 39.]

“HEAD-QUARTERS IN THE FIELD,
August 29th, 1862—4.30 P. M.

“MAJ. GEN. PORTER:

“Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with Gen. Reynolds.

“The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

“JOHN POPE,
”Maj.-Gen. Commanding.”

Immediately on receipt of the above order Gen. Porter sent Col. Locke with verbal orders to Gen. Morell to attack with his whole force, and after writing to Gen. Pope an acknowledgement of the receipt of the order, Gen. Porter went himself to Morell, and then the events occurred which are described by Gen. Morell, N. R. pp. 427-28-29, and Col. Locke, N. R. 207-98-99.

In further explanation on this important point, attention is called to the fact that the order (37) under which Morell was moving his troops into position for an attack (O. R., 146), spoke of “*the enemy as retreating*,” and directed an attack with “*two regiments supported by two others*.” Whereas, the order sent and delivered by Col. Locke, on receipt of the 4.30 order, directed Morell “to move forward his *division* and attack the enemy” (O. R., p. 223.)

When Gen. Porter arrived at the front he found it was so late and the night was approaching so nearly, it was impossible to make the attack as ordered by him in pursuance of the 4.30 order, and he verbally directed Gen. Morell to put his men in position for the night.

Other dispatches were sent by Gen. Porter to Gens. Pope and McDowell, but as all of them went into their hands and have not been returned, it has not been in Gen. Porter's power to define them.

In arranging these dispatches it has been with reference to their order as to time, as shown by the testimony and the dispatches themselves. The order may not be entirely correct. But we believe there can not be much variation as to time, or mistake as to order. We present this arrangement of them as being as nearly accurate as can now be arrived at.

One (O. R., page 82), acknowledged by Gen. Pope to have been received in reply to the 4.30 order, would be especially of value as fixing

the hour of the receipt of that order, and as giving Porter's opinion at that time of the condition of affairs in his front, without reservation, to his commanding officer.

The fact that I speak with any diffidence as to the exact order of the dispatches may elicit some comment. But it should be borne in mind that upon the trial before the court-martial Gen. Porter did not have the dispatches produced before this Board by Gen. McDowell, nor several of those now produced by Gen. Morell, nor the one produced by Gen. Warren.

He did not then have, and has not now, either the dispatch sent to Gen. Pope through Lieut. Weld, or the reply to the 4.30 order sent to Gen. Pope by the hands of Capt. Pope. The length of time which has elapsed renders it somewhat difficult for Gen. Porter to arrange the dispatches or the events in their exact sequence.

But I submit that when the contents of the dispatches are properly considered in connection with the events as described by the witnesses, they will sustain the arrangement I have given above.

They explain what Gen. Porter was doing throughout all the hours of that afternoon, and must silence the charge that he was lying idle during that period.

It is difficult to comprehend how, with these facts, Gen. Porter could have been found guilty of disobedience to the joint order. I submit that the statement of what he did after receiving it is the best refutation of the charge. Gen. McDowell took away about two-thirds of the force with which the joint order was to have been executed. From that moment, successful execution of the order became impossible in view of the enemy in Porter's front. He was left by McDowell in such a position that he was compelled to recognize the duty to exercise his best judgment and discretion in the use of his force, and he could only be responsible for an honest exercise of that discretion; and that he acted with honesty, zeal, and fidelity is made apparent by the statement already given and founded upon the dispatches written at the time of the occurrences of that afternoon, which statement, so well substantiated, I have endeavored to make in the spirit which should actuate an unprejudiced historian, and almost wholly without the addition of argument. His conviction under the circumstances would have seemed impossible.

Indeed, this problem is only solved when the many and serious errors and mistakes made by the court-martial are perceived. I speak of them as being made by the court-martial. I believe myself justified in this assertion by the fact that I find these errors in the revise by Judge Advocate-General Holt, and I assume that the revise presents the process of reasoning through which the court-martial arrived at their conclusions, or is, certainly, the best argument by which those conclusions could have been attempted to be supported.

Having given, as seems to me, the true explanation of the joint order, and a narrative of the events of the 29th as they bear upon the conduct of Gen. Porter, I propose now to take up the revise or opinion of the Judge Advocate, for the purpose of pointing out what seem to me to be the errors into which he has fallen upon this subject. If you should agree with me, as I do not doubt you will, in thinking that the court-

martial could not but have been led to their judgments by falling into the same errors which misled the able Judge Advocate, and which new evidence enables us more readily to set right, and, if I should be so fortunate as to make those errors as clearly apparent to you as they are to myself, I cannot but confidently hope for their correction by you.

IT IS AN ERROR TO ASSERT THAT McDOWELL TOOK COMMAND OF PORTER'S FORCE BEFORE THE JOINT ORDER WAS RECEIVED.

The Board will recollect that prior to the receipt of that joint order Gen. Porter was moving first towards Centreville, but that, after receiving the verbal order through Capt. Piatt, he faced about and went back towards Gainesville, with King's division as a part of his command.

You will recollect that in moving up towards Centreville, Gen. Porter had an interview with Gen. McDowell; that he afterwards received the order by Piatt and then faced about and was moving back again towards Gainesville, when he received the Gibbon order; and that he had another interview with Gen. McDowell. You will recollect that immediately after Gen. McDowell was informed that King's division had been assigned to Gen. Porter, Gen. McDowell wrote a note to Gen. Pope, remonstrating against King's division being turned over to Porter, and asking that he be returned to him.

Now, Gen. McDowell seems from the time Gen. Porter first saw him, or from the time that he was informed that King's Division had been assigned to Porter's command, to have been loitering and hanging on to the skirts of Porter's command until he could get an answer back from Gen. Pope re-assigning King's command to him. Knowing that was not his place, that he had no business, at a time when his services were demanded elsewhere, to be thus idling away his time, he endeavors to give a reason for having taken that position; and that reason is to be found in his testimony on page 91 (O. R.), in which Gen. McDowell says this (he says it in a number of other places in substance, but here he states it very distinctly):—

“ Gen. Porter and I started out from Manassas with the understanding that under the article of war applicable to such cases, I had command of the whole force—his own and my own.”

The Board should bear in mind that this relates to a period of time anterior to the receipt of the joint order. Our proposition is that after the receipt of the joint order, these two commands being joined, the sixty-second article of war did apply. But prior to the receipt of that order, I submit that the sixty-second article of war had and could have no application whatever. I submit this to be the state of the case: that when Gen. King's division was assigned to the command of Gen. Porter by the superior officer, Gen. Pope, that simply made King's division a part of Porter's command, and that it was incorporated with his command, just as Sykes' and Morell's divisions were incorporated before. Further than that: when that division was taken from Gen. McDowell, he lost control and power over it, and had no more to do with it than any one of the other officers; and the sixty-second

article of war had, and could have, no application to the position in which Gen. McDowell and Gen. Porter found themselves at that time. Moreover, if I am right in the views which I take in reference to the sixty-second article of war, and the position in which they were placed, it would have been a military offense in Gen. Porter to have conceded the command to General McDowell under the circumstances. It would have been derogatory to Gen. Porter's position as commanding officer; it would have been a want of self-respect; and I do not see how anybody who knows anything about General Porter could for one moment believe that if he wanted to turn his command over to anybody, he would have selected Gen. McDowell for any such purpose.

Now, the Judge Advocate fell into this error. Let me say this: I do not think that the errors which appear to me to prevail throughout this opinion, and which appear to have been adopted by the court-martial, and which misled President Lincoln, and which have pervaded this whole country from one end to the other in reference to this case—I do not think it is at all extraordinary to find that they took such a hold; because when you take the testimony of Gen. McDowell and Gen. Pope (so far as Roberts and Smith are concerned, I do not think they had much influence), you will find apparent ground for every error into which the court-martial seems to have fallen, and which seems to have been adopted by the Judge Advocate in the opinion to which I am referring.

The Judge Advocate says (and in this respect he has followed the language of Gen. McDowell) that previous to this they had met, and under the sixty-second article of war, McDowell had assumed command. I say that is wholly an error on the part of the Judge Advocate. In the first place, Gen. Porter could not have surrendered his command to Gen. McDowell, under the circumstances; there is not a fact to sustain it; and, on the contrary, the testimony of Gen. Gibbon shows, directly, the contrary. Gen. Gibbon says, at page 245 of the Board's Record:—

“Answer. Gen. Porter placed the order in his hands. That is, in McDowell's hands.

“He read it, and expressed dissatisfaction at the fact that a portion of his command was assigned to General Porter; or, rather, not that a portion of his command was assigned to General Porter, but that a portion of his command was taken from his command—King's division. There was some conversation between the two.”

It is to be borne in mind that this order delivered by Gen. Gibbon, which was a written order, was delivered to Gen. Porter after the information had been communicated to McDowell by Piatt (the verbal order of the morning), that King's division had been given to Gen. Porter; that is, General McDowell had information for some time previous to this of the fact that Gen. Porter had King's division with him.

He proceeds, “I recollect that one point, the fact that Gen. McDowell requested Gen. Porter, when he formed his line of battle, which it was supposed he would form in the direction of Gainesville, that he would

place King's division on his right, so that he (McDowell) could have his command together, it being known at the time that Reynolds' division, a portion of McDowell's command, was out in that direction somewhere, supposably on the right of what would be Porter's line.

"Question. Was there any conversation between Gen. Porter and Gen. McDowell upon that subject further than the request of McDowell to Porter?

"Answer. I think not; I don't recollect any.

"Q. Did you understand that at that time Gen. McDowell assumed or asserted any right to take command of the forces which were under Gen. Porter?

"A. Not at all; on the contrary, I should have considered any such request as proof positive that he had not assumed command.

"Q. That is, the request as to King's division?

"A. Yes, sir."*

I do not know that it is a matter of importance in one sense, and yet it is of very great importance, as it seems to me, in considering Gen. McDowell's subsequent conduct under this joint order, and also in determining the extent to which his testimony can be relied upon. Therefore, I wanted to clear up this matter with reference to whether he did take command or not. If he was not then in command, it affords an illustration of Gen. McDowell's readiness to make his evidence conform to what he deemed to be proper for his own vindication, without regard to the facts as they really occurred.

When we come to the time at which the joint order itself was received, then I submit that it is perfectly clear that, under the sixty-second article of war, Gen. McDowell had the right, and it was his duty to assume command. That article provides that if, upon marches, or doing duty together, different corps join, the officer highest in rank is to command.

Gen. McDowell came up to Gen. Porter with the joint order in his hands. Unquestionably, matters were changed. Then, and not until then, did Gen. McDowell assume command; and then, and not until then, was he in a position to assume command of the joint forces.

IT WAS AN ERROR TO SUPPOSE THAT PORTER'S FORCE HAD REACHED THREE MILES BEYOND BETHLEHEM CHURCH.

Upon looking at this revise by Judge Advocate Holt, we find that he states, when he began to consider the joint order, and Gen. Porter's conduct under it:—

"Their forces continued their march, those of the accused being in the advance, until the front of his column had reached some three miles beyond Bethlehem Church, and until a small part of Gen. McDowell's command had passed that point."

* Since the close of this case, the following dispatch of August 29th from Gen. McDowell, at Manassas, to Gen. Pope, at Centreville, has been furnished to Gen. Porter:—

"I have just seen your last order telling Porter to take *King!* Of course this is but temporary, and I have asked Porter to place King on his right, that I may have him when you say so.

"I. McDOWELL."

Now, this was one of the errors made by the court-martial; it was one of the errors which was made by the Judge Advocate; it was, probably, the beginning, the substratum upon which all the other errors that pervaded this case were founded. That, and one other, were the two, in my judgment, important points in this case. I allude now to the order alleged to have been given by Gen. McDowell, to put his "force in there."

But this one is the beginning of the serious mistakes.

Three miles beyond Bethlehem Church would take Gen. Porter to a point about *here* (indicating a fringe of woods below Hampton Cole's).

We know perfectly well that Gen. Porter never did get beyond Dawkins' Branch, except with his skirmish line. We know that this statement that Gen. Porter was three miles beyond Bethlehem Church was an entire misapprehension upon the part of the court-martial. The question arises:—How did they come to fall into such a mistake, or adopt such an error as that?

Gen. Pope says that if Porter had obeyed orders, it would have brought him up with the enemy at 4.30. That shows that he supposed Gen. Porter had gotten up to a much higher point than he had done, though he did not profess in his testimony to be able to say exactly where Gen. Porter was. You will recollect that when pressed by Gen. Porter's counsel, in the former examination, to state where he supposed Gen. Porter to be, they were unable to get him to designate the spot where he supposed Gen. Porter was; he simply stated that he knew he was somewhere on the road between Manassas and Gainesville, but where he was he could not say, only he thought he ought to have been at a point which would have enabled him to have made an attack upon the flank and rear of the enemy in the afternoon. Gen. Smith thought he could have made a flank and rear attack, and we know where Gen. Smith thought he was, and where he stated that he was, or that he would put him. He admitted he had placed his position much farther forward than he really was (page 360 N. R.). Gen. Roberts says that he thought he knew where he was, and he puts him up in the same neighborhood. They all evidently thought, or pretended to believe, that he had reached a point at least a mile or more in advance of Dawkins' Branch.

But the testimony of Gen. Roberts, and Gen. Smith, and Gen. Pope, would probably have had but little influence with reference to the position of Gen. Porter, because no one of those knew really anything about it. None of them were there, none of them saw where he was. But Gen. McDowell did; Gen. McDowell had been there; he knew where Gen. Porter was; he knew what his position was, and the court-martial had a right to expect from Gen. McDowell the truth.

It is not surprising, as they were situated, that they should have taken from him a statement in reference to the position of Gen. Porter, and relied upon that statement as being the truth. They certainly had the right, Gen. Porter had the right, the country had the right to have had Gen. McDowell state truthfully and honestly where Gen. Porter was, if he knew it, and he ought to have known it. Testimony of Gen. McDowell upon this point, as it seems to me, had a very powerful effect upon the result of that trial. He says, on page 84 O. R.:—

“The country in front of the position where Gen. Porter was when I joined him was open for several hundred yards, and near, as I supposed, by seeing the dust coming up above the trees, the Warrenton turnpike, which was covered from view by woods. How deep those woods were I do not know. It did not seem at that time to be a great distance to that road (the Warrenton turnpike). I had an impression at the time that these skirmishers were engaged with some of the enemy near that road.”

Again, he says, on page 221 :—

“Question. From your knowledge of the condition of things on the 29th of August, was there any considerable force of the enemy in front of General Porter’s corps, near the Manassas Railroad, on the south side of it?

“Answer. I have no positive knowledge on that point. I have not supposed that there was, but I can not support that supposition by any positive facts.”

Then he is asked another question, and then he says :—

“The distance from Gen. Porter’s head of column to the road at that time was not so great as to have enabled a large force of the enemy to be between them, and to be detached from the main body of the enemy.”

Then, on page 94 of the Court-Martial Record, he says: “General Porter’s corps was on the road leading from Bethlehem Church to Gainesville, and the rear of it was at a distance from Bethlehem Church sufficient for the larger part, if not the whole, of one of my brigades to occupy that road. I should suppose his column occupied, perhaps, *three miles of the road.*”

Thus you see that Gen. McDowell is the author, and, as far as I am aware, he is the only person who is the author of this allegation that Gen. Porter’s front was stretched out over three miles from Bethlehem Church in the direction of Gainesville. Now this error is a very serious one. If Gen. Porter had reached three miles in advance of Bethlehem Church in marching towards Gainesville, then the allegation would undoubtedly have been true that he had retreated; because we know that Gen. Porter’s front was at Dawkins’ Branch, or about two miles from Bethlehem Church, on the night of the twenty-ninth. We allege that he never got further than that. We do not pretend that he was in advance of that at any time. And, if you establish it as a fact that Gen. Porter’s line was at any time three miles in advance of Bethlehem Church, then the conclusion is irresistible and inevitable that he had retreated at least one mile to get back to Dawkins’ Branch. Thus you see, that this error of the Judge Advocate, that Gen. Porter reached a point three miles from Bethlehem Church, at once implies that it was found by the court that Gen. Porter retreated, and, when you come to look for the authority of the Judge Advocate in alleging that Gen. Porter had reached a point three miles in advance of Bethlehem Church, you will find that his authority is Gen. McDowell alone.

Now there is not a particle of evidence to sustain the proposition that Gen. Porter’s advance was three miles from Bethlehem Church at any

time. "Their forces continued their march, those of the accused being in the advance until the front of his column had reached some three miles beyond Bethlehem Church, and until a small part of Gen. McDowell's command had passed that point." (Opinion of Judge Advocate, page 307 O. R.) I want to call your attention to the fact that the language of Gen. McDowell in stating that the head of the column had reached those three miles, is precisely the language which was adopted by the Judge Advocate. That is, the Judge Advocate says, that a small part of Gen. McDowell's command had passed that point, and Porter's forces had gone on three miles. Gen. McDowell says, page 94, Court-Martial Record: "Gen. Porter's corps was on the road leading from Bethlehem Church to Gainesville, and the rear of it was a distance from Bethlehem Church sufficient for the larger part, if not the whole, of one of my brigades to occupy that road. I should suppose his column occupied, perhaps, three miles of the road." The identical language, almost, that is used by the Judge Advocate in stating that Porter's column reached three miles from Bethlehem Church. So that the error into which the Judge Advocate has fallen is founded upon what, I say, is a mistake made by Gen. McDowell, that Gen. Porter's corps had reached a point over three miles in advance of Bethlehem Church on that road.

I suppose it is entirely unnecessary for me to enter into any argument to prove to you that the furthest point to which Gen. Porter reached was Dawkins' Branch (not over two miles from Bethlehem Church), because there is now no pretence on the part of anybody—the Recorder does not pretend, and I have heard nothing during this investigation to indicate—that Gen. Porter was supposed to have gone beyond Dawkins' Branch. If he had reached three miles from Bethlehem Church he would have been within the enemy's lines. If that is true, then, unquestionably, the court-martial fell into an error in the conclusion at which they arrived in reference to the position and location of Gen. Porter, and the point to which his advance had reached. It was an error of the most material character in arriving at the truth with reference to the charges which were made against him.

ERROR AS TO THE CHARACTER OF THE BATTLE OF THE 29th.

Now I come to consider another of the errors, as it seems to me, into which the court-martial must have fallen, as shown by the opinion of the Judge Advocate. And that is, in reference to the character of the engagement or battle which was then supposed to be going on. The Judge Advocate says, page 307, O. R.: "They discussed the joint order, and Gen. McDowell determined, for himself, that there were 'considerable advantages to be gained by departing from it,' and by moving with his forces along the Sudley Springs road towards the field of a battle then being fought by the main army of Gen. Pope, at the distance of three or four miles. His purpose was to throw himself on the enemy's centre, and he wished the accused to attack his right flank."

We have never intended to convey the impression that we supposed there was not serious fighting on the twenty-ninth. Gen. Porter's counsel have never contended that there were not one or more occasions, during

that day, when the fighting was by as many as 3000 or 4000 men. But what we allege and what we think has been abundantly proven is, that the fighting which took place that day consisted, in the morning, mainly of skirmishing and artillery firing at long range; that about twelve o'clock there was a lull which continued until, say three o'clock, and that the real infantry fighting that was done was at intervals from three o'clock until dark. Now the Judge Advocate says, on page 311 of the Court Martial-Record :—

“The accused had, for between five and six hours, been listening to the sounds of the battle raging immediately to his right.”

This, again, is founded, as it seems to me, upon the testimony of Gen. McDowell, who says, on page 85, Court-Martial Record, when speaking of what was occurring between Gen. Porter and himself, when they met up at Dawkins' Branch :—“The sound of battle, which seemed to be at its height on our right, towards Groveton,” &c.

Then he goes on to speak of “the note of Gen. Buford indicating the force that had passed through Gainesville, and, as he said, was moving towards Groveton, where the battle was going on.”

Then, again, on page 86, speaking of the time at which he was at Dawkins' Branch, which, as you will recollect, was somewhere about noon, or between twelve and one o'clock :—

“Q. Was or not the battle raging at that time ?

“A. The battle was raging on our right; that is, if you regard the line of the road from Bethlehem Church to Gainesville to be substantially north-west, the battle was raging on the right and *east* of that line at Groveton.”

Gen. McDowell here says the battle was raging to the *east* of his and Porter's position, intending thereby, as it did, to lead the court into the belief that Porter was much farther in advance than Dawkins' Branch and up near the Warrenton pike.

He was reckless of his data, when he chose to be.

That certainly was calculated also to produce an impression upon the mind of the court-martial, and convey to the mind of the Judge Advocate that at the time Gen. Porter and Gen. McDowell were upon Dawkins' Branch discussing what they should do under the joint order, with the view to the duty which had been assigned to them, and the circumstances that existed, at that time, off to the right and the east, this battle was raging plainly within their hearing. That is the statement of Gen. McDowell, yet you know that at that time there was a lull upon the field. In point of fact there may have been some artillery firing. But the commander of the army himself had arrived upon the field about noon and had commanded those forces to cease any active movement, and they remained in that position until in the neighborhood of three o'clock. Yet here is the man who, of all others, knew most about this thing; who was present with Gen. Porter; the man who himself had once been selected as the commander of the armies of his government; the man who was the trusted and chosen adviser and officer in whom

Gen. Pope chiefly relied during this campaign—this man who was present with Gen. Porter, who knew the circumstances, knew the position, who knew what that joint order meant, who knew what Gen. Porter's duty was under the circumstances, who knew more of this transaction than anybody else could possibly have known, and, therefore, was the man upon whom the court-martial relied for the purpose of obtaining a true knowledge of the facts connected with that transaction—that man states that which you know at this time, and he knew at that time, to have been wholly untrue; because I submit, even if there had been artillery firing which occurred then, that when he stated to the court-martial that the battle was raging to the right, he meant not artillery firing at long range, but he meant infantry fighting, and such a fight as was deemed to have been proven to have taken place on that day, in order to prove that Gen. Porter, coward-like, shrank away from the performance of his duty to his comrades who were struggling in an unequal combat with their foes. And I submit that Gen. McDowell knew, when he used that language that the battle was raging to the right, he was planting poison in the mind of the court-martial which was to destroy the man whom he was seeking then to bring down to the position which he felt that he himself was in danger, and too much danger, of reaching, to be able to pursue the straightforward, honest, manly course, which he ought to have done, which his duty called upon him to do, and thus to protect and save his comrade from the disgrace and ruin which was then threatening him. Unfortunately for Gen. Porter, unfortunately for the cause of justice, unfortunately for the cause of truth, ay, more, unfortunately for the sake of Gen. McDowell himself, I fear that his heart had never a manly beat which would enable him to meet such an issue and stand where only an honest man should stand, and tell the truth, and take the responsibility that rested, and ought to rest, upon himself, rather than throw it upon the shoulders of some other officer who happened to be in a position where it could be thrown upon him. He certainly did not show any such disposition in this case, and he certainly did give a false impression to the court-martial when he made that statement, and he could not but have known that it was such when he was making it.

Gen. McDowell could not have committed such an error from ignorance. He knew the real facts when he testified. To suppose he did not would imply a degree of stupidity which no one would ascribe to him. And if further proof was needed on this point he has furnished it himself. Conscious of the wrong he had done to Gen. Porter, of the effect his evidence had produced, and of the exposure to which he was liable, years after these events he prepared and assisted in circulating the extract from Jackson's report of the battle of the 30th of August, 1862, as being the report of the battle of the 29th. The purpose was plain. It was to show that this terrific battle, which he had described as raging on the right and east when he and Porter were upon Dawkins' Branch, had actually occurred, and to magnify Porter's failure in making an attack upon that day. It was to show also that if Porter had attacked on the 29th, Longstreet could not have gone to Jackson's assistance, and that thus the destruction of Jackson would have been secured.

In order to justify his own misstatement, he alters the date from the 30th to the 29th, and then parades it as showing that the facts were as

they had been testified to by him. It is idle to contend that Gen. McDowell fell into this blunder innocently. For, as he says he made the extract from the Rebellion Record, it would be too severe a tax upon credulity to suppose that he did not see that the report related to the 30th. But if he did not see this, then he was guilty of such carelessness or recklessness as to preclude the possibility of putting reliance upon any statement he would make.

But in either aspect it is clear that his evidence should not be relied upon.

If he was innocent of intentional perversion, then he was so reckless as not to be entitled to have any reliance put upon his statements. If he was guilty of willful misstatement, then it would prove a want of truthfulness that should sweep out of the case the whole effect of his evidence. Whichever view you may take of this matter must destroy the force of the finding of the court-martial and of the opinion of the Judge Advocate, so far as they were based upon the testimony of Gen. McDowell.*

* Gen. McDowell deposed as follows. See pages 765, 766, 767, and 768 (N. R.).

Q. Do you not know that what you printed and circulated as an extract from Gen. Jackson's report of the battle of the 29th was in fact an extract from his report relating to the battle of the 30th?

A. At the time I made that extract I supposed it referred to the 29th. It was afterwards claimed that it referred to the 30th. On looking at it again I found that it was made, I think, in the next spring after these events took place. It seemed to me that Gen. Jackson had mixed up the 29th and 30th, and that some parts might belong to one and some parts might belong to the other.

Q. I speak of this part which you published as his report of the 29th. Do you not now know that it is actually his report of what took place on the 30th?

A. I do not now know any more than I knew then. I supposed that it referred to the 29th. I heard afterwards that it referred to the 30th, and I supposed he mixed the 29th and 30th together.

Q. Do you suppose so now?

A. I do. He made that report six or eight months after the occurrences. I think men very often mix up persons and occurrences after they have passed some time.

Q. You were an active participant in the events of both the 29th and 30th of August, were you not?

A. Yes, sir.

Q. Does not your personal knowledge of the events of those two days enable you to form a judgment as to whether that extract contained a truthful account of the 29th or of the 30th, and which?

A. I think he has mixed the two days together. My judgment is from what he said that he confused the two days together.

Q. I ask you about this?

A. I understood so.

(Question repeated.)

A. I have answered the question.

(Mr. Choate.) I submit to the Board that he has not.

(The President of the Board.) I think the witness' answer referred to his understanding when this matter was discussed afterwards. The question now is as to his present knowledge from his own observation of those two days; whether this extract describes what occurred on the 29th, or what occurred on the 30th, or whether a part of both?

(The Witness.) I tried to make myself understood that from my judgment, from what I knew, it does refer to the two days. I will say further, more to the 30th than the 29th. When the question came up first, I did not think so. Then the question came up that it did refer to the 30th, and looking it over, I could see that it did bear more upon the 30th than the 29th; but, as I said before, I do think the two things were mixed up in his mind.

Q. (By the President of the Board.) You can say, then, that it refers to both those days?

A. I think so.

Q. Do you think he intended it to refer to both those days?

A. That is a question. What I think is a little too much of a psychological question for me to say.

Q. Do not you know that it is actually an extract from his report, given by him as a report of the transactions of the 30th?

A. I did not. If I did, I should never have published it as I did. If I made a mistake, it certainly was a great mistake for me to suppose it was the 29th if it was the 30th.

Q. Now, I show you the document that you printed, and also a copy of Gen. Jackson's printed report.

And here let me add that if Gen. McDowell, before the court-martial, had taken upon himself the responsibility of that halt of Porter, as he did that of reducing Porter's force some seventeen thousand men, and of thus forcing Porter to pursue the course he did, McDowell would now have the credit of having acted wisely and properly, and of having thereby deferred at least one day the disaster that fell upon Pope the

A. "Report of general operations from 15th of August to the 5th of September." That is the way it is headed. It is not divided up into heads, but he gives a current narrative of the operations of his forces from August 15th to September 5th, and you have to cut it up to see what belongs to one and what belongs to another.

Q. You put at the head of it "Operations of the 29th of August?"

A. Because I did at the time understand it to refer to the 29th of August.

Q. That is what I am now testing.

A. I have told you that three or four times.

Q. You won't say if that is genuine?

A. Of course it is genuine, or I would not have told you so. When I published this, I supposed it referred to the 29th of August; afterwards it was claimed that I did not refer to the 29th of August.

Q. I am now inquiring whether you did suppose it referred to the 29th?

A. I have told you six or eight times that I did, when I published that matter, suppose it referred to the 29th, and I tell you again that it refers to a continuous series of operations from the 15th of August to the 5th of September, and it is for the person who reads it to say how much belongs to this day and how much to that. In reading it, I did suppose it referred to the 29th.

Q. It is because you did suppose it referred to the 29th that you headed the whole thing the 29th?

A. Of course it was.

Q. Will you say whether that extract contained in your pamphlet from Gen. Jackson's report, is the same which appears upon pages 96 and 97 of the printed report of Gen. Jackson?

(The Recorder.) I object to that question for the reason that it is not shown that that is the book from which he took the extract.

Q. You said it was. You said you made the extracts from this very book?

A. No; I did not say this very book, I said a book of Confederate reports. If this is the book, all right.

Q. Will you look at pages 96 and 97 of the book before you, which purports to be Gen. Jackson's report, and say whether that paragraph at the bottom of page 96 and the top of page 97 is the one you took and printed?

(The Recorder.) I object, unless it is shown that that is the book from which it was taken.

(The President of the Board.) There is no objection to his making such a comparison. The objection is overruled.

The witness read as follows:—

The foregoing is a true copy from the original report, with the following corrections *
* * * Signed,

E. D. TOWNSEND, *Adjutant-General.*

(The Witness.) Is not that sufficient?

Q. I ask you if that is the paragraph that you intended to print?

(The Recorder.) I would like to ask the witness whether he knows that that is the book from which he got the paragraph?

(The President of the Board.) That is understood for the moment to be immaterial.

(The Recorder.) I object to the witness being required to make comparisons with matter not shown to have been used by him.

(The President of the Board.) The witness will proceed.

After examination, the witness said, I will say that *this* paragraph and *that* seem to be the same.

Q. You extracted it and printed it, and circulated it, supposing that Gen. Jackson said that in reference to the battle of the 29th?

A. This is the seventh or eighth time I have told you so.

Q. That being so, I want to know whether and when you extracted it and printed it, you observed and read the next preceding sentence as follows:—

"On the following day, the 30th, my command occupied the high ground, and the divisions the same relative positions to each other and to the field which they held the day before, forming the left wing of the army. Gen. Longstreet's command formed the right wing, and a large quantity of artillery was posted upon a commanding eminence in the centre."

Then comes your extract:

"After some desultory skirmishing, and heavy cannonading, and so forth."

(The Recorder.) I object to the question, as it does not yet appear what Gen. Longstreet's report was.

(Mr. Choate.) It does not say anything about Gen. Longstreet's report. I ask him if he observed that the next preceding sentence says, that on the following day, the 30th, such and such transactions took place.

next day, and he would not now be standing before the country in the pitiable light of one willing to sacrifice even to death, a brother officer, rather than bear for the time being the unjust censure of a misinformed public.

Here, again, it is quite manifest that the Judge Advocate, in adopting this error, has taken it from Gen. McDowell, because you will recollect Gen. Pope says that from the time he arrived upon the field of battle, which was about twelve o'clock, he ordered the troops to cease any further exertions. But Gen. McDowell says that was the precise time at which the battle was raging at its height. Now, the Judge Advocate could not possibly have fallen into an error of this kind, except by having taken the testimony of Gen. McDowell as his guide in arriving at his conclusions. He says that "a vigorous attack upon the enemy by the accused at any time *between twelve o'clock, when the battle*

(The Recorder.) In the book that you used?

(Mr. Choate.) Yes.

(The Recorder.) Very well.

A. I did not observe that.

Q. If you had observed that, you would have seen that the extract, which you quoted as relating to the 29th, was intended to set forth in the report what related to the 30th?

A. If you have read it correctly, I would.

Q. Well, look and see. [Book handed witness.]

(The Recorder.) I object to that book being put in the hands of the witness for any such purpose.

(The President of the Board.) This book has been admitted for the purposes of this cross-examination. The objection made by the Recorder has been ruled upon.

(The Witness.) From reading this, I am entirely satisfied that I was in error in supposing that report to refer to the 29th.

Q. It did, in fact, refer to the 30th, and was so given to Gen. Jackson?

A. Yes. It was a mistake that I made.

Q. Made, do you suppose, because you did not read the previous sentence?

A. You are now asking me a little more than I am able to say. I can not go back and say how I made the error which I acknowledge to have made. If you want anything further on the subject, I will say that I now see that I made a mistake at that time, and if you desire me to say so, I will say that I am exceedingly sorry I made it.

Q. No. I do not want that. Of course you are. What I want to ask is this:—Whether a publication made containing this extract as a basis of a report on, or criticism of Gen. Porter's conduct on the 29th, was not calculated to do him great injustice?

A. It was not calculated to do him great injustice.

Q. Would it not have that effect?

A. I will not say that. But you can judge that for yourself.

Q. Is it not your opinion that it would—do you not know that it would do him great injustice?

A. I told you that it was a mistake. I told you that I had apologized for making it. I do not know how much more you want. If you desire me to tell how much harm it did, I can not answer you.

* * * * *

Q. How long did you remain of the impression that this extract, printed by you from Gen. Jackson's report, did refer to the 29th?

A. Until about fifteen minutes ago.

Q. Until fifteen minutes ago?

A. Until just now. I believe I have answered your question about that very clearly and very positively, that I did suppose, until this examination took place, that the report of Gen. Jackson, and the extract I made, referred to the 29th. I then told you that when a question had arisen in regard to it, I supposed he had confused the order of events of the two days. Having read it over more carefully, I have since told you that I was mistaken, and that it refers to the 30th. I think that exhausts the whole question.

* * * * *

Q. Did it occur to you then that if this mistake had been made, and it in fact referred to the 30th, and not to the 29th, an injustice had been done to Gen. Porter which might be corrected then?

A. You must understand that up to within a few minutes I never knew what I have since admitted to be the fact—that that statement did not refer to the 29th.

began, and dark, when it closed," &c., thus showing you that the Judge Advocate supposed that this fight began about twelve o'clock; whereas you will remember, as I stated, that from twelve to three o'clock there was no fighting, thus showing that the Judge Advocate has taken his view upon that subject, and has fallen into that error, by reason of Gen. McDowell's statement that the battle then was raging at its height at the very time when he knew it was not, and that there was no truth in the statement. What we say is, that there was no battle that day, in the sense implied in the charges and specifications and in the proceedings before the court-martial; that it was not of the character which was then found; not of a character such as would have led Gen. Porter to feel that there was a necessity for his taking this course or that course, by reason of the heaviness of that engagement.

I do not propose to go into minute details as to what the engagement was. You will recollect Gen. McKeever's testimony. That is probably the clearest account of it. If my recollection serves me right, Gen. McKeever's testimony was to the effect that there was an attack by Hooker with one brigade; an attack by Grover, just before or just after, with one brigade; Kearney made several attacks; not more than three thousand engaged at any one time; probably four attacks, all in the afternoon; attacks not continuous or simultaneous, separated at intervals of an hour. The fighting by infantry was in the afternoon to the north-east of Groveton, and about dusk along the Warrenton pike in the vicinity of Groveton. Gen. McKeever was probably in a better situation to know and understand what went on during that day, so far as the fighting in the neighborhood of the Warrenton pike was concerned, than any one else. You will recollect his testimony that the fighting in the afternoon while it lasted was probably as severe and as determined as any that occurred at any other times during the war. But the forces were not large, and it was not a general engagement, such an engagement as was expressed in the language used by Gen. McDowell, such as was found by the court-martial, and such as was adopted by the Judge Advocate as a proper statement of what the character of the engagement was. But you have the testimony of twenty or thirty witnesses, called as well by one side as the other, to the effect that during that day, in the vicinity of Dawkins' Branch and back to Bethlehem Church, there was no sound of a battle to be heard by the officers or soldiers who were with Gen. Porter. There can be no dispute upon that question, because when you have men such as were examined before you stating those facts, and no contest or dispute by the other side, then you may, I think, set it down as conclusively established that during that day, until late in the afternoon, when the engagement took place with Hood's division—that until then, during that day, there was no musketry firing heard at General Porter's position, and that the artillery firing was not such as to indicate a general engagement.

Further than that, you now know every movement that was made during that day by the troops, and the several positions, not merely of each division of the various corps, but of almost every regiment of that army, and you can fully appreciate how grievous was the error of finding that there was any such general battle as is described by Gen. McDowell, and how unjust it was to Gen. Porter to view his conduct in the light of imputed knowledge of any such supposed engagement. Again, it

should be borne in mind that the joint order was dated at Centreville; that it expressed a purpose of withdrawing behind Bull Run that night; that Gen. Porter did not know, until the receipt by him of the 4.30 order, about sundown, that Gen. Pope was not still at Centreville or had come on the field. Was it not a fair inference on the part of Porter that no general engagement would be fought unless the commander-in-chief had come upon the field? He did not know that he was upon the field. He heard no firing to indicate a general battle; had received no information of any kind stating there was such an engagement. In point of fact, as now established, there was none such. You can clearly comprehend how absolute was the mistake that Gen. Porter, "*knowing that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed*, did fail all day to bring it on the field." It was an error. The testimony of Gen. McDowell in the main induced it. Gen. Porter was the sufferer by it. I submit that it is now your duty to correct it.

IT WAS AN ERROR TO FIND THAT GEN. MCDOWELL DIRECTED PORTER
TO ATTACK, AS HE ALLEGED.

The next point to which I wish to call the attention of the Board is what seems to me to have been the error fallen into by the court-martial and by the Judge Advocate, as to the statement made by Gen. McDowell that he gave an order to Gen. Porter, in these words:—"You put your force in here and I will take mine up the Sudley Springs road on the left of the troops engaged at that point with the enemy." (Page 307, O. R.) Now, in order to consider the weight to be given to that statement by Gen. McDowell, it is proper to take into consideration the position which Gen. McDowell and Gen. Porter occupied at that time, the circumstances under which they were then placed, and the conduct of Gen. McDowell at and about that time. I have endeavored to explain the character, the purpose, and the object of the joint order.

In order to determine the precise position which Gen. Porter and Gen. McDowell relatively occupied to each other, and to that joint order, and the situation, allow me to call your attention to what I have already referred to; that is, that Gen. McDowell had requested General Pope to turn Gen. King's division back to him; to the fact that Gen. McDowell had remained in the rear of the troops without command and without object, and where he ought not to have been, but with the purpose alone, as it appears to me, and I think the evidence fully warrants me in so stating, of awaiting the reply from Gen. Pope, which would re-assign Gen. King to him. When you look at the testimony you will find that Gen. McDowell, immediately upon receiving this joint order which accomplished the purpose, as he supposed, for which he had been waiting, rode on to the head of the column as rapidly as possible with the joint order in his pocket, and with the determination and purpose when he arrived there of doing what he did afterwards, to wit, taking King's division away from Gen. Porter. That such was his purpose, and practically his only purpose, I think, will be made manifest by looking at the testimony of Gen. McDowell, at pages 790 and 791 of the testimony taken before the Board. Gen. McDowell was asked this question:—

“Q. Did not you understand that one of his brigades was deployed ?

“A. I don't know whether it was a brigade, or division, or regiment ; I was not there for that purpose. I did not look into that question ; I did not go into criticism, or take into my mind what movements Gen. Porter was ordering with his own troops. He was in command of the corps, and I did not pretend to go into the details of the corps commander's disposition of his troops. I did not pretend to direct or criticise—it did not come into my mind to do it—what Gen. Porter was doing with his troops. *I went there for another purpose.*”

Thus you see that Gen. McDowell says himself that he was not troubling his mind with what was occurring at that time with the troops which confessedly were under his command, as the superior in rank, at the time the joint order was received. That was not concerning him. *He went there for another purpose.* On page 791, the question was asked :—

“Q. Did not you have any idea as to how far it was or how long it would take you ?

“A. I thought I could get my troops into action quicker that way than I could by bringing them up in the rear of Gen. Porter's, because the road was blocked up with his corps. I was excessively anxious to join Reynolds.

“Q. Was it not for the purpose of coming in on the left of Reynolds with both of your divisions ?

“A. I should have done so if left to myself.”

What he intended by saying that he was not left to himself, was that when he marched over on the Sudley road and was about putting his troops, as he alleges, on the left of Reynolds, he was prevented from doing it by an order from Gen. Pope to make an attack. He there says, when the question is asked, “Was it not for the purpose of coming in on the left of Reynolds with both your divisions ? A. I should have done so if left to myself.”

As I read that testimony, when he went up to the front at Dawkins' Branch, and had his conference with Gen. Porter, the purpose for which he went was to take King's division away from Gen. Porter. You have Gen. McDowell, when this order was given assigning King to Porter, expressing his dissatisfaction, and applying to Gen. Pope to countermand that order and return King to him ; you have him waiting in the rear of Gen. Porter until an answer comes ; you have him then going to the front and having a conference with Gen. Porter himself, and, by his testimony, avowing that his object in going, was for some other purpose than to see what was being done with the troops there. His purpose was, as I submit from this testimony, to take away King from Porter, and take him over to the left of Reynolds. If I am right in that, then it seems to me that in looking at the conduct of Gen. McDowell at the time, and at the position he then occupied, and the purpose he had in view, you can form some proper determination, in connection with other circumstances, as to whether Gen. McDowell did say to Gen. Porter, “You put your force in here ;” that is, in the sense, and

with the meaning which Gen. McDowell, in his testimony, sought to have the court-martial suppose, he had intended it.

What was that meaning? If the Board will pardon me while I call attention to Gen. McDowell's testimony, you will see that the meaning of that, as it was given by Gen. McDowell, was very plain: that it meant, according to Gen. McDowell's testimony, that an attack should be made by Gen. Porter upon the enemy in his front with his whole force. When I say with his whole force, I mean that it was not to be a mere tentative effort, but that it was to be a real attack made with as large a force as Gen. Porter could bring to bear upon the enemy in his front. Upon page 85 of the Court-Martial Record, Gen. McDowell in his testimony says:—

“The question with me was how, soonest, within the limit fixed by Gen. Pope, this force of ours could be applied against the enemy. Gen. Porter made a remark to me which showed me that he had no question but that the enemy was in his immediate front. I said to him:—‘You put your force in here, and I will take mine up the Sudley Springs road, on the left of the troops engaged at that point with the enemy,’ or words to that effect. I left Gen. Porter with the belief and understanding that he would put his force in at that point.”

On the same page he says, in answer to this question:—

“Q. You have said that the accused made an observation to you which showed that he was satisfied that the enemy was in his immediate front. Will you state what that observation was?

“A. I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply. The observation was to this effect, putting his hand in the direction of the dust rising above the tops of the trees, ‘We can not go in there anywhere without getting into a fight.’

“Q. What reply did you make to that remark?

“A. I think to this effect: ‘That is what we came here for.’”

The effect of that language is plainly to imply that Gen. McDowell meant that Gen. Porter should make the attack, and make it in as decided and strong a manner as possible. One portion of the remark implies what I think shows the animus, the spirit, which was actuating Gen. McDowell when giving this testimony as against Gen. Porter. It is the key to the whole of his testimony. When he says, “I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply,” he intended to convey the thought that Gen. Porter was shrinking from an engagement with the enemy from improper motives. It was this gratuitous insinuation which afforded the Judge Advocate occasion to say, on page 307 (O. R.):—“Why this expectation was doomed to disappointment may possibly be gathered from the following extract from Gen. McDowell's testimony, as to what occurred during his conversation with the accused.” And after quoting the extract I have given above, he adds:—“These words” (that is what we came here for) “will certainly stand in memorable contrast with the sad utterances to which they were a reply.”

These were bitter words on the part of the Judge Advocate, and they show how effectual had been the work of Gen. McDowell in grafting on the mind of the Judge Advocate the poison, the seed of which was in his own evidence, and its fruit in the finding of the court-martial.

Why should Gen. McDowell have said :—“And I do not know that the accused meant exactly what the remark might seem to imply?” That was not evidence. It was not the statement of a fact. What purpose could he have had in it but that of impugning the motives and blackening the character of Gen. Porter?

What more potent words could he have used to instill into the minds of the court-martial the belief that Gen. Porter was either cowardly or treacherous? That he accomplished his purpose most effectually was demonstrated by the finding of the court-martial, and is illustrated by the bitter and uncompromising tone that prevails throughout the opinion of the Judge Advocate. If you are satisfied that there was nothing in Gen. Porter's conduct to have warranted such an insinuation, then you must draw the inference that Gen. McDowell was not giving testimony as a fair and impartial witness, but that his mind was, for some reason or other, so inflamed against Gen. Porter that his words; whether as an insinuation, or opinion, or statement of fact, can not be relied upon, except where they are corroborated by some other undoubted evidence. I trust I do not go too far in this criticism of Gen. McDowell. The circumstances appear to me fully to justify it.

Gen. Porter was then upon trial for the highest military crimes. His honor, his liberty, his life, were at stake. Gen. McDowell was the principal witness against him. On his evidence really the whole case depended. The failure to obey this alleged order of Gen. McDowell to attack was the most serious point in the whole case.

Just there and then, when he had sworn to the fact of having given the order, with what appears as most malicious ingenuity, he injects into the minds of the court-martial this base insinuation. If true, it would have been most ungenerous. If untrue, then no words can be too harsh in its denunciation. That he did not believe it himself is shown by his own testimony on page 93 (O. R.).

Examination by the court-martial :—

“Q. When the accused said to you that he could not go in anywhere there without getting into a fight, did he or not appear to be averse to engaging the enemy?”

“A. *I can not say that it made that impression upon me, though in giving my answer I took the view that he did so imply and made the remark; but I did not think he was averse to engaging the enemy.*”

Does not this reply justify all I have said about the unfair and disingenuous character of his evidence?

The remark of Gen. Porter did not make that impression upon him. He did not believe Gen. Porter was averse to engaging the enemy. Yet without being asked any question that justified him in so stating, he had insinuated to the court-martial in his previous answer that Gen. Porter did mean to imply that he was so averse. In other words he had volunteered an insinuation of the most damaging kind against Porter, which he

had not entertained at the time the remark was made, and which he did not and could not have believed when he made it.

It requires a broader mantle of charity than is usually thrown over the testimony of witnesses to condone such an offence against fair dealing and truth-telling as this was, and admit its author to the fold of those upon whose words the fate of a fellow-man can be made to depend.

And here let me call your attention to the fact, that while the Judge Advocate quotes the extract from Gen. McDowell's evidence, in which this most injurious imputation is made, and makes it the foundation of a bitter attack upon Porter, he has omitted any notice whatever of Gen. McDowell's reply, on page 93, to the effect that he did not believe that Gen. Porter was averse to engaging the enemy, or that he had such an impression at the time the remark was made. It is but another illustration of the apparent impossibility which then existed of giving to the case that impartial judicial consideration which its gravity so much merited, and must greatly lessen the weight to be accorded to the findings of the court and to the opinion of the Judge Advocate.

But to return to the evidence of Gen. McDowell as to what he intended by this order. On page 87 of the Court-Martial Record he says :—

“Q. Are you to be understood as saying, that before you saw the order to Gen. Porter of 4.30 P. M. of the 29th of August, you, under the discretion you supposed was reposed in you, by the joint order to yourself and Gen. Porter, had directed him to attack the enemy's right flank and rear?”

“A. To that effect; yes, sir. I *knew* I had that discretion.”

In other words, that before he saw that order of 4.30 P. M., he had already directed Gen. Porter to make an attack upon the enemy's right flank and rear, to the same effect as was conveyed in the 4.30 P. M. order. Again, on page 92 of the Court-Martial Record :—

“Q. The orders you had given to Gen. Porter were not in opposition, or at least not of a different character from the one that came to him from Gen. Pope?”

(That is, the 4.30 order.)

“A. They concurred. The arrangements that I supposed to exist when I left Gen. Porter concurred with the order which I afterwards saw from Gen. Pope to Gen. Porter. They were to the same effect, except as to details, which Gen. Pope may have given. I gave no details.

“Q. Would or would not the presence of Gen. Pope, an officer superior in command to both yourself and Gen. Porter, render inoperative or inapplicable the article of war to which you have referred?”

“A. It would depend upon his presence, whether it was immediate or not.

“Q. We speak of such presence as existed then.

“A. We did not so consider it. Gen. Pope, according to the note we received, was at Centreville, which, I suppose, was some six miles

off, and we were going away from him. I will mention further that the day before, nearly a similar case happened, when Gen. Sigel and myself were together at Buckland Mills, and I commanded Gen. Sigel. That was done by a direct order from Gen. Pope before given. Still it would have been the same if he had not given that order.

“Q. Could the accused have engaged in the battle according to your order, and according to the subsequent order of Gen. Pope, and still have fallen back to Bull Run within the time named in the joint order to yourself and the accused?”

“A. Yes, sir.”

Mr. Choate suggests that, in this connection, I shall read the 4.30 P. M. order, which I will do.

“HEADQUARTERS IN THE FIELD,
August 29TH, 1862, 4.30 P. M.

“Your line of march brings you in on the enemy’s right flank. I desire you to push forward into action at once on the enemy’s flank, and, if possible, on his rear, keeping your right in communication with Gen. Reynolds. The enemy is massed in the woods, in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

“JOHN POPE,
“Major-General Commanding.

“MAJOR-GEN. PORTER.”

Thus you will see that the testimony of Gen. McDowell which I have been reading, conveyed to the mind of the court-martial, conveyed to the mind of the Judge Advocate, conveyed to the mind of the President, when he came to read over this opinion and revise of the Judge Advocate-General, conveyed to the mind of the people of the United States who took an interest in these proceedings and knew what they were, that at noon, on Dawkins’ Branch, when Gen. Porter and Gen. McDowell were at the head of the column looking across towards the enemy on the hills beyond the stream, Gen. McDowell gave to Gen. Porter an order to make an attack, of the same effect as this order of 4.30 P. M.

I wish to go on to refer to all that portion of Gen. McDowell’s testimony where he has iterated and reiterated this statement, so that you will see how very strong Gen. McDowell was before the court-martial in the enforcement and re-enforcement of this statement, that he had given this order to Gen. Porter and what he meant by giving that order; because afterwards I think we shall be able to show that Gen. McDowell’s conduct and his own declarations do not sustain what he then said. On page 93 of the Court-Martial Record, (recollect that this is a sequel to that which I have just read), in which he said that the order which he gave to Gen. Porter concurred with the 4.30 P. M. order which Gen. Pope had given Gen. Porter. In answer to this question:—

“Please state the ground on which you formed the opinion that if the accused had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor?”

“A. Because on the evening of that day I thought the result was decidedly in our favor, as it was. But, admitting that it was merely equally balanced, I think, and thought, that if the corps of Gen. Porter, reputed one of the best, if not the best, in the service, consisting of between twenty and thirty regiments, and some eight batteries, had been added to the efforts made by the others, the result would have been in our favor very decidedly.”

Then again on the same page,

“Q. When the accused said to you that he could not go in anywhere there without getting into a fight, did he, or not, appear to be averse to engaging the enemy?”

“A. I can not say that it made that impression on me, though, in giving my answer, I took the view that he did so imply, and made the remark——”

Then on page 95 of the Court-Martial Record,

“Q. When you left Gen. Porter for the purpose of taking the Sudley Springs road, did you, or not, expect that he would attack the enemy as soon as he could reach them, and did you, or not, consider it his duty to do it?”

“A. I have already said as much, I think; at least I meant to say it.

“Q. Had the accused made a vigorous attack with his force on the right flank of the enemy at any time before the battle closed, would, or would not, in your opinion, the decisive result in favor of the Union army, of which you have spoken, followed?”

“A. I think it would.”

Again,

“Q. * * * Do you mean to say now that the fortunes of the day would have been changed, if he had made an attack without his batteries?”

“A. I believe it would.”

Again on page 97 of the Court-Martial Record,

“A. To have defeated Gen. Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and, I think, would have still resulted in a success to our side, to our army generally.”

These extracts which I have read from the testimony of Gen. McDowell, show that he intended to convey to the minds of the court-martial, or intended that the inference should be drawn from his testimony, that Gen. Porter had received from him this order to make the attack to the same extent and to the same effect as the order which was given by Gen. Pope at 4.30, and to imply that it had been Gen. Porter's duty under the order, which he gave him, to make that attack, and that it would have been his duty, even without his order, to have done it; that Gen. Porter by failing to make the attack, as thus ordered, had been guilty of a violation of duty for which he was grossly culpable. It was upon that testimony, probably, the court proceeded in finding Gen. Porter guilty, with more confidence than almost any other, because there was an order

given by a commanding officer on the spot, as he said, to make the attack. And I suppose they must have thought that Gen. McDowell being present, and knowing the circumstances, was best able to judge, and that Gen. Porter ought to have obeyed that order.

I think, if you will look at the proceedings of the court-martial and the testimony, and the opinion given by the Judge Advocate, you must come to the conclusion that this allegation of such an order was probably the most fatal blow which Gen. Porter received in this case.

Now the question comes:—Was it true that Gen. McDowell gave any such order to Gen. Porter? Bear in mind that Gen. McDowell and Gen. Porter were there under the joint order to which I have referred, the purpose of which was, as I suppose, the most important movement made during that campaign—the purpose being to prevent the junction of Longstreet and Jackson—to press Jackson from the rear while the troops were pressing him upon the Warrenton pike in front, and thus, if possible, crush him. Bear in mind that this was being done in pursuance of the views which Gen. McDowell himself had enforced upon Gen. Pope; that this was being done in pursuance of the plan which Gen. McDowell fully understood and approved, if he was not the originator of it. Bear in mind that Gen. McDowell knew all that, and he knew in addition that Gen. Pope had sent toward Gainesville this force of twenty-five thousand to twenty-seven thousand men, being some ten thousand more than had been on that line the day before, for the purpose of accomplishing what was then believed to be vital to success in the campaign. Under these circumstances, was it not natural that Gen. McDowell should have endeavored to carry that order out? Was it not his duty to have attempted to carry it out? Was it not his duty to see that the force or pressure of twenty-five thousand to twenty-seven thousand men, which he then had under him, consisting of Ricketts' and King's divisions and Gen. Porter's corps, should be brought to bear at the point and for the purpose which, of all others, were the most important of that campaign? Was it not his duty at that time to endeavor to follow the directions given by that order, so far as it was possible for him to have accomplished it? He was then the superior in command; he it was who had control of Porter's force as well as his own.

Knowing the importance of that order, knowing the fact that he had these troops under him, what does he do? Instead of trying to carry that order out, either in the spirit or letter, no sooner has he received the joint order than he hurries up to Gen. Porter as fast as he can go, and at once indicates what his purpose is. He first seeks to put King on the right. When that can not be done, he determines to take him off along the Sudley Springs road to the Warrenton pike, thus breaking up the force which Gen. Pope had united under these two commanders, for the purpose of carrying out the object of the joint order, thus rendering it impossible to carry out the order any further; thus abandoning and throwing it overboard. And for what purpose? Why, in order that he might accomplish that which he had had in his mind from the time he heard King had been assigned to Porter, which was to take King away from Porter and get him back under his own command.

Let me ask, if he believed that it was Gen. Porter's duty to make the attack, if he believed it was his duty to tell Gen. Porter

to make the attack, would he not have made it himself, when he had those troops there, as being doubly sure of success? What was there in the nature of the circumstances, or about the position of his force, or that of the enemy, which should have made him hesitate for a moment to make the attack when he had this large force under him, instead of allowing it to be made by a little more than one-third of that force? If it could have been made by Gen. Porter, with any expectation of a successful result, would not the addition of the fifteen thousand to seventeen thousand men, who were with King's and Ricketts' divisions, have insured that result? Would not the attack, if it had been as valuable as Gen. McDowell undertook to convey to the court-martial the impression that it would have been,—would it not have been doubly assured if this force of fifteen thousand to seventeen thousand men had been added? Is it then reasonable to suppose that if Gen. McDowell believed that the attack should have been made,—is it reasonable, I say, to suppose that he would have acted in the way he did? If he wanted to seek the field of battle, as he says, is it probable he would have gone back a distance from the point at which he and Gen. Porter were then in consultation—back to Bethlehem Church, two miles, and five miles to the Warrenton pike, and one and one-half miles towards Groveton—a distance of six or eight miles, for the purpose of seeking the battle-field, when the battle-field, according to his own notion, was then right in his front?

Perhaps you may not always be able to determine what a man has said by what he does; but I do not know any better method of ascertaining how far you can rely upon a statement which may be made, than to test what the man says by what he does. I say, if you will apply that test here—what was done by Gen. McDowell, to what he says he said to Gen. Porter at that time—that any rational man must believe that Gen. McDowell simply stultifies himself when he asks anybody to believe that he did say to Gen. Porter to make that attack, and then went off some six or eight miles, taking with him fifteen to seventeen thousand men whose presence and co-operation he must have known were essential to the success of the movement. It is not consistent with reason. Men do not act without some motive. It is true that Gen. McDowell says he did not take anything into his mind that day; it is true he says he did not take into his mind what Gen. Porter was doing, or the condition of his troops, and that he did not take into his mind what were the eventualities of that order; and, if I recollect aright, in answer to a question put by the president of the Board, he said, "I was not looking to the close of the day; I was going on the plan that 'sufficient unto the day is the evil thereof.'" (Page 829, N. R.) Nevertheless, I suppose Gen. McDowell's mind, inert as it appears to have been, acted with some little degree of reason. And, if it did, then his conduct in turning off, and going along the Sudley road, taking these troops away, is entirely inconsistent with his pretense that he gave an order to Gen. Porter to make the attack in force when he was at Dawkins' Branch. A man who has related facts somewhat from imagination, does not always remember what he says.

We have here, in 1870, a paper published by Gen. McDowell, in which he says this. I will only quote as much as applies to this particular subject:—

“Gen. McClellan seems to have been ignorant of the fact that up to the time of McDowell’s separation of his command from Porter, the opposing forces had not come within range of each other. The separation—that is, the separation between McDowell and Porter—took place before conflict was possible. There can be no question, therefore, of responsibility on either general for not making an attack before noon. Early in the forenoon, when McClellan says was ‘the only opportunity of attacking with good chances of success,’ *the approaching forces were miles apart.*”

You have, in other words, Gen. McDowell’s statement at one time that he said to Gen. Porter in effect, there was the enemy, and to go in there and make that attack, and do it at once; there is no difficulty in your moving upon them immediately. We have him again, in a paper which certainly ought to have been well considered, stating that at the very time, as he now says, he had ordered the attack to be made, the forces were miles apart, and a conflict was impossible. By what sort of rule can such inconsistencies be reconciled? Was he stating the facts when he published the paper in 1870? If so, did he tell Porter, in 1862, to attack an enemy that was miles distant, when a conflict was impossible?

Gen. McDowell says, on pages 217 and 218 (Court-Martial Record), that he and Gen. Porter agreed at that time they could not go further towards Gainesville; they agreed that Gen. Porter must not attempt it, or that they could not do so. Why was this? You will recollect that Gen. McDowell said to Gen. Patrick—(that is to be found on page 189 of the new evidence), the language, if I recollect it aright, was about this: “Porter has got about as far as he can go,” or, “as far as he ought to go.”

You have Gen. McDowell declaring, himself, before the court-martial, that Porter could not go further towards Gainesville. You have him declaring to Gen. Patrick that Porter had gone as far as he could go. If that were true, it was because the enemy was in front of Porter in such large force as to put it out of the question to attempt the advance—that is the only reason. If Gen. McDowell knew that the enemy was in front of Porter at that time, then can it be possible, if he believed an attack should have been made upon that force of the enemy, he would have turned his back upon the fight?

But, having taken his seventeen thousand men and gone away from Porter, should he not have justified himself by the fact that he believed the joint order inculcated non-attack, under the circumstances of finding the main force of the enemy already in his front, one day in advance of what Gen. Pope had pronounced? Was not that the real, the true ground of his separation, and that he did not intend to attack himself, or for Porter to attack? Can any other ground be conceived of that offers any excuse for his conduct, and is at the same time consistent with integrity of purpose? But subsequently he found he had committed an error—he feared being censured for separating from Porter, and not moving on the enemy—disaster ensued, and an incensed public looked for a cause, and the responsible officials for a victim. He had not the manhood to take the temporary burden, and shifted it to the shoulders of his comrade in arms.

He imputed to Gen. Porter a disposition to shrink from the fight; he used language in reference to him which induced the Judge Advocate to

say that which was bitter and galling to Gen. Porter in the extreme. It is made the ground-work on the part of the Judge Advocate-General of imputing to Gen. Porter, practically, cowardice or treachery.

Now, I do not believe that the trait of courage is one which deserves to be very much extolled in a soldier, but the want of it certainly deserves condemnation.

As far as my observation has gone, of this army under Gen. Pope, I think it can be said that the want of courage was not common to either officers or soldiers in that army, and while we find the fighting seemed to have been done rather promiscuously, yet, wherever the soldiers came in contact with the enemy, they behaved with a degree of stubborn courage which is not excelled by soldiers or troops anywhere.

I have never seen anything connected with this army to lead me to believe that the imputation of a want of courage was just to either officers or soldiers. I would not be disposed to impute to Gen. McDowell any want of courage, or any indisposition on his part to go into the fight. I do not think it existed. I am sincere in stating my belief that it did not exist; and that his moving back at that time was not because he had any indisposition to go into the fight, further than what arose from motives that were proper and controlling with him. But that his indisposition to go was because he believed that Longstreet's force had made its appearance in front in such numbers as to render it unwise and injudicious, with the views which he knew Gen. Pope entertained with reference to the mode of conducting the campaign, that Porter and he should make an attack upon Longstreet at that time, in such a way as to bring on a general action.

Believing this, I submit that Gen. McDowell's conduct in withdrawing from the field, and going back towards Sudley Springs—along the Sudley Springs road towards the Warrenton pike—contradicts Gen. McDowell's statement that he directed Gen. Porter to put his force "in there," with a view to making an attack; for the one is utterly inconsistent with the other. And as we know that Gen. McDowell did march along the Sudley Springs road to the Warrenton pike, we therefore must infer necessarily and positively that he could not have said to Gen. Porter, "you put your force in there," with a view to making an attack. It is probable when he deposed to those words before the court-martial he was betrayed into it by a trick of his memory similar to that which led him to impute to Porter's remark, "We can not go in there anywhere without getting into a fight," the meaning that he was averse to engaging the enemy. If he could pervert in the one case, it is not difficult to conceive that he could do so in the other. He probably did recollect having said, or having expressed by a wave of his hand, that Porter should put his forces into the woods there, meaning the woods on the ~~west~~ side of Dawkin's Branch and south of the railroad, and that Porter should remain there to hold the enemy in check while he went off up the Sudley Road. His memory probably gave at this point one of those sudden twists—just such as it did before—and he "took the view" that it implied that Porter should move against the enemy, and then it grew into an order to attack in force, and by and by it became stronger and stronger, until it concurred with and was to the same effect as the 4.30 order, and directed Porter to attack the enemy in flank

east-

and rear, and thus on each occasion when he testified about it the proportions became greater and greater, until finally it meant what Porter's imperative duty required of him without orders; what Gen. Pope peremptorily ordered by the 4.30 dispatch, and what, if it had been fulfilled, would have achieved a "decisive result in favor of the Union army." The times and the occasion were propitious for the cultivation of such a memory.

Somebody had to be victimized. Gen. Pope asserted that Porter should have attacked, the War Department thought he should have done so, the country thought it likewise, and if Gen. McDowell had sworn that he had ordered Porter to remain where he was, on the defensive, Gen. McDowell would have simply put himself in the breach. The trial of Porter would probably have ceased, and Gen. McDowell would have been subjected to that ordeal. A man must be made of very stern stuff to come squarely up to such an issue and take upon himself such a responsibility. That Gen. McDowell realized this to be the issue and that he testified throughout in defense of himself is manifest upon the most cursory examination of his evidence before the court-martial and before this Board. He appeared to feel that the conviction of Porter was essential to his own vindication. With such a pressure upon his mind, perhaps the flexibility of his memory is not so much to be wondered at, and if he could insinuate to the court-martial that Gen. Porter's remark, referred to above, implied that he was averse to engaging the enemy from unworthy motives when he knew to the contrary, it does not require any great stretch of the imagination to suppose that this alleged order to attack was likewise an invented afterthought.

Here again, let me call the attention of the Board to the influence which this testimony of Gen. McDowell must have had with the court-martial, by showing you the influence that it had with the Judge Advocate. He gave a prominence to that alleged order, and put it forward as the thing of all others which chiefly condemned Gen. Porter. Now, let me ask this question; if it were true, would not Gen. McDowell have stated it to Gen. Pope previously, and if Gen. McDowell had stated it, is it not probable that that very order itself would have been embodied in the charges and specifications?

These charges and specifications, when you look at them, are evidently prepared by somebody who intended to throw a drag-net around Gen. Porter, and cover all his actions during August 29th. How can it be possible that Gen. McDowell had ever said that to anybody? If he had said it, it would have been his duty to report it, and it would have appeared in the charges and specifications. But it is not there.

So impressed was the Judge Advocate with the importance of this point that, when he came to consider it, he noticed nothing which apparently could have any effect to show that there was a possibility, much less a probability, of Gen. McDowell having been mistaken as to this order.

It would appear that, almost from the beginning of the trial before the court-martial, the mind of the Judge Advocate had been imbued with deep and bitter prejudices against Gen. Porter.

When you take up pages 16 and 17 of Gen. Pope's testimony, it would seem that all his questions are addressed as though there was no

doubt about Gen. Porter having violated the joint order, and having acted contrary to his duty in every possible respect.

I wish to read this testimony of Gen. Pope from pages 15, 16, and 17. I do not mean to say that this has anything specifically to do with the order of Gen. McDowell, "Put your force in there;" but it shows how strong was the prejudice against Porter, and the bias in favor of McDowell, on the part of the Judge Advocate in framing his questions, and on that of Gen. Pope in his replies.

Gen. McDowell's examination followed in the wake of Gen. Pope's, and it is not difficult to understand how well inclined he must have been to respond to the expectations as to his evidence which were foreshadowed in the examination of Gen. Pope. It also illustrates, I think, the errors and mistakes that were made about this matter, of which I am now speaking, quite as well as it does some other points of the case.

Page 15 (O. R.).

"Q. Was there any engagement then pending?"

"A. Fighting was then going on along the turnpike that led from Centreville to Warrenton—fighting was going on quite sharply.

"Q. Did the march of Gen. Porter's command, as indicated in that order, lead him towards that battle?"

"A. Yes, sir. It led him towards the flank of the enemy."

As I understand it, the battle indicated by Gen. Pope was upon the east of Groveton, and on the Warrenton pike, between Groveton and the Sudley Springs road. The line of Gen. Porter's march would have taken him not, certainly, in the direction of that battle. I do not mean to say that he could not go around and reach it. But the statement that Porter's march led him towards that battle certainly conveyed an incorrect impression. I think you will find, as I read it, that that is something which may have had very materially to do with the finding of the court-martial. Both question and answer were directed so as to show that Porter should naturally have come on to the field of battle if he had continued his march, and the purpose is developed further on when Gen. Pope proves that McDowell passed Porter in order to reach that field. The question is then asked:—

"Q. What was the distance between Manassas Junction and the scene of the engagement of which you speak?"

"A. Between five and six miles, I think; though I had not, myself, been over the road."

Now it is a little difficult to determine what that means, because Gen. Pope has already described the scene of this engagement as being on the Warrenton pike, east of Groveton. Then he is asked what the distance is between Manassas Junction and the scene of this engagement. He is, undoubtedly, speaking of the line upon which Gen. Porter was ordered to march; and if he means, by taking the line upon which Gen. Porter was marching, that it was five or six miles from Manassas to that field of battle, it certainly is clearly a mistake, and only shows how wildly Gen. Pope was talking. Gen. Porter's line of march was towards Gainesville, and not to the Warrenton pike, east of Groveton. But this again

is but the precursor of the subsequent statement that Porter failed to do what was done by McDowell, viz., come on to the field of battle with his troops, and that McDowell passed Porter in so doing.

“Q. Do you know the character of the road? Had you passed over it?”

“A. I had not passed over it.

“Q. Did Gen. Porter obey the order addressed to him and Gen. McDowell?”

“A. I do not know whether he obeyed it. He did not obey it fully. How far he obeyed it I am not able to say; he certainly did not obey the order fully.

“Q. If he had obeyed it would it not have brought him up with the enemy before half-past four in the evening?”

“A. Yes, sir.”

Now, the word “obey” has, as I suppose, a technical meaning. I suppose it is the opposite of “disobey,” of course; and the word “disobey” or “disobedience” in a military sense means, that the person who is guilty of disobedience must have failed to comply with an order from some improper motive. Thus it must be willful. A man may fail to comply with or fail to fulfill an order, and be perfectly right in so doing, be perfectly justifiable in so doing; but “disobeying” an order means something of a very different character. That is, it is a failure to fulfill or comply with an order from, as I said, some improper or willful reason.

Now, you will observe that the question is whether he obeyed or not, and the answer is that he did not obey, because, if he had, it would have brought him up before half-past four in the evening.

The question and answer import not merely non-compliance with the order, but a willful non-compliance. It is manifest that this was not a proper question or answer. He should have been asked as to the facts. The inference should have been for the court. One of the accusations was that Porter had disobeyed the order. That was a question of military law. Gen. Pope was a witness. By what right or rule could he be either asked or permitted to express an opinion upon the crime charged? It is but another illustration of the disadvantage under which Gen. Porter was being tried, owing to the prejudice of which I have spoken.

“Q. On your arriving on the battle-field where was he reported to you to be?”

“A. I arrived on the battle-field at twelve o'clock, about noon. At four and a-half o'clock nobody on the field knew where Gen. Porter was at all.

“Q. Did, or did not, Gen. Porter obey the second order to which you refer, issued at 4.30 P. M. on the 29th of August, directing him to engage the enemy in flank, and, if possible, in rear?”

“A. He did not, so far as my knowledge of the fact goes.

“Q. You have no knowledge of his having made any attack then?”

“A. I should have known it if he had attacked.

“Q. Will you state to the court, and describe the condition of the battle-field at that hour, and the importance of his obedience of that order to the success of your troops?”

“A. Late in the afternoon of the 29th, perhaps towards half-past five or six o'clock, about the time that I hoped that Gen. Porter would be in his position, and be assaulting the enemy on the flank, and when Gen. McDowell had himself arrived with his corps on the field of battle.”

Bear in mind that this is described, again, as the field of battle apparently to which Gen. Porter's march would have carried him.

“I directed an attack to be made on the left of the enemy's line, which was handsomely done by Heintzelman's corps and Reno's corps. The enemy was driven back in all directions, and left a large part of the ground with his dead and wounded upon it in our possession. Had Gen. Porter fallen upon the flank of the enemy, as it was hoped, at any time up to eight o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson.

“Q. You have stated that Gen. McDowell obeyed that order, so far as to appear on the battle-field with his command?”

“A. Yes, sir.”

Now, let me ask the Board to consider for a moment how had Gen. McDowell obeyed that joint order? What single act had Gen. McDowell done in fulfillment of or compliance with the joint order, except to take command of the force long enough to destroy the effect of the spirit and purpose of that order by taking King's and Ricketts' divisions away? That was the only step, as I submit, which Gen. McDowell ever took in pursuance of that order, and I think that you may say that his taking them to the Sudley Springs road was certainly not the fulfillment of the order in any possible sense. If the question and answer above referred to illustrate the prejudice against Porter, do not the last question and answer show the bias in favor of Gen. McDowell? It is, as I submit, a perversion of language to assert that the order enjoined upon McDowell a march along the Sudley road to the Warrenton pike. No latitude, however great, could warrant such a construction. Whether the discretion allowed by the order covered such a movement might be doubtful, but to say that McDowell *obeyed* the order by this movement is about as exact as it would be to allege that a man who was ordered to go to Albany from New York by the Hudson river, had obeyed the order by taking an East river boat and going to Newport. It exhibits an overweening purpose to shield McDowell.

“He arrived on the battle-field, I think, about five o'clock, and immediately pushed forward his corps to the front; the division of Gen. King having a very sharp engagement with the enemy along the Warrenton turnpike, in advance of the position we had occupied during the day.

“Q. To reach the battle-field had, or had not, Gen. McDowell as great a distance to march as Gen. Porter?”

“A. Yes, sir. I should think fully as great.”

What does he mean by that? Does he mean that Gen. McDowell and Gen. Porter should have marched over the same road? Does he mean that Gen. Porter should also have turned back to the Sudley road, and gone that way up to the Warrenton pike? Or does he mean that Gen. Porter had as great a distance to march by going around? It is simply impossible, as I say, to understand; and I suppose that Gen. Pope was talking about this thing without knowing anything about the roads. I do not suppose that he knew where Gen. Porter's line of march would have carried him. I suppose that he did not know what was the route Gen. Porter would have had to take, and I can not conceive that he could have given this testimony if he had been over the roads and knew anything about the map.

But this had its injurious effect before the court-martial. They supposed he did know. He gave his testimony as a man who ought to have known.

I have no doubt at all that it had its effect upon their minds; it certainly did upon that of the Judge Advocate. But what had the conduct of Gen. McDowell in *obeying* or *disobeying* the order to do with Porter's criminality? It is clear it bore no proper relation to it. It was deemed necessary, however, in order to condemn Porter, that McDowell should be acquitted of responsibility. This double purpose develops itself more or less throughout the whole of the proceedings before the court-martial, and always to the injury of Porter.

Mr. Maltby reminds me that Gen. Pope said he never had been over these roads at all. I suppose that is the only way of accounting for such remarkable testimony as this is:—

“Q. I believe you have stated the distance from Manassas Junction to the battle-field as above four or five miles?”

“A. Five or six miles; I am not quite sure; that is my impression.”

“Q. Is or is not that about the distance which the command of Gen. Porter would have had to have marched to have obeyed your order?”

“A. It would have had to march less than that. You refer, I suppose, to the order I issued about half-past four in the afternoon?”

“Q. Yes, sir.

“A. Gen. Porter was reported to me, by the *aide-de-camp* who delivered him that order, to be two miles or more from Manassas Junction, in the direction of the field of battle.

“Q. In point of fact, did or did not Gen. McDowell, in obeying that order, pass Gen. Porter and his command on the way?”

“A. I so understand.”

Where did McDowell pass them? Starting out, as the Board will recollect when I commenced reading these extracts from Gen. Pope, with the recollection that he described the battle-field as being on the Warrenton pike east of Groveton, and that all the way through this testimony which I have read Gen. Pope has been giving the idea to the court-martial that Gen. McDowell was marching to this battle-field with hot haste, eager to perform his duty; that Gen. Porter was lagging behind indifferent, yes, worse, that he was not willing to go into action at all, he caps the climax by stating that Gen. McDowell would have had to pass the troops of Gen. Porter in marching to that battle-field.

Does not that plainly convey the impression that Gen. McDowell would have had to march over the same road that Gen. Porter was upon, and upon which Gen. Porter would have had to march? Does it not convey the impression that in some way or other, while Gen. Porter was lying at Dawkins' Branch, Gen. McDowell must have passed him? Now, we know the fact that Gen. McDowell's troops were back here (between Bethlehem Church and Manassas Junction, and a small portion west of Bethlehem Church). Instead of passing, they were simply separated by turning to the right and going off to the north. Gen. McDowell, with King and Rickett's divisions, was in the rear of Gen. Porter's corps. He moved off to the north along the Sudley road, nearly at right angles with Porter's line of march, which was to the westward, in the direction of Gainesville. There was no passing about it. The language which I have read to you conveys plainly the impression that while Gen. Porter was lying along here, lagging behind, Gen. McDowell in some way passed him to the field of battle. This testimony was taken on the first day's proceeding of the court-martial. It was Gen. Pope's testimony, and it seems to have had—that page and a half which I have been reading—seems to have had the effect of possessing the minds of the court-martial and the Judge Advocate with the idea that Gen. Porter was so affected by his hostility to Gen. Pope that he was determined that day to do nothing to assist him, and would leave his army to its fate; and they seem to have been ready to accept any statement which Gen. Pope or Gen. McDowell made as a verity, no matter how monstrous and mistaken it was. There is one way of accounting for it, and that is by supposing that the map which they had before them was of a very imperfect character, as we know it was, or by supposing that they had but little reference to the map; for, as far as I can see from the trial, they seem to have known very little of the real topography of the country and the real position at that time of the troops, and to have cared less. Gen. Pope seems to have been indifferent to these matters wherever it was necessary to disregard them in order to condemn Porter. This testimony of Gen. Pope is but a fair sample of the errors and perversions that are to be found throughout that record. I have called your attention to them for that reason, and also to show how the way was prepared for Gen. McDowell to travel in the same direction. Gen. Pope's testimony relieved McDowell at Porter's expense. How could Gen. McDowell do less than follow on in the same line?

But to return to the alleged order of McDowell to attack. There is some other testimony which I think has a material bearing upon this. You will recollect that on the former trial Col. Locke, who was Gen. Porter's assistant adjutant-general and chief of staff, stated that when Gen. McDowell came up to Gen. Porter at Dawkins' Branch, he said to him substantially this: "Porter, this is no place to fight a battle, you are too far out." The same thing was testified to by Capt. Martin, chief of artillery of Morell's division. Locke and Martin both state that when Gen. McDowell came up to Gen. Porter at Dawkins' Branch, Gen. McDowell said to Gen. Porter, "Porter, this is no place to fight a battle," or "you are too far out," or "your troops are too far out."

Now, if my memory serves me right, this testimony on the part of Locke and Martin receives no attention at the hands of the Judge Advocate

at all in his review; yet, I think, unquestionably it ought to have been stated, because it certainly seems to be inconsistent with the idea that Gen. McDowell could have given such an order to Gen. Porter to make an attack if he had also stated to him, "Porter, you are too far out; this is no place to fight a battle." Well, as a matter of course, Gen. McDowell might have changed his mind. Certainly, the remark attributed to him by Locke and Martin, "Porter, you are too far out; this is no place to fight a battle," is very much more consistent with Gen. McDowell's conduct than what he says he said, "Porter, put your force in there," meaning he should attack in force.

Gen. McDowell does not deny, and never has denied, that he said to Gen. Porter, "You are too far out; this is no place for a battle." He did not deny it before, and he does not deny it now; he simply says he does not recollect whether he said it or not. We have proven by Lieut. Davis and by Maj. Earle that they too were present and heard Gen. McDowell say to Gen. Porter, "Porter, you are too far out; this is no place to fight a battle." But that which seems to me to be most conclusive is the testimony of Gen. Patrick. Gen. Patrick, I suppose, is a man whose testimony is very reliable; I should think, from what I saw of him as a witness, he was about as reliable a witness as could be found. He does not appear to be a man of much excitability; he is certainly a man of deliberation, and I should think his memory could be relied upon.

"Q. Give your best recollection of what occurred between you and Gen. McDowell.

"A. He directed me to halt. He said, 'I am sorry,' or to that effect, 'that you are so quick of foot. It turns out this time to your disadvantage. I have got to countermarch you. I want to take you over by another and a better route to the scene of yesterday's operations.' There and then, and while we were moving, he told me that Sigel was in a bad way, and he said, 'I am going to take you away from Porter.' I can not now say whether it was at that time or subsequently, for I didn't pay special attention to it; it was something, however, like this: 'Porter has gone as far as he can go,' or 'Porter is as far as he can go.' Something to that effect. I can not now recollect the words. That was the general substance. 'I want to put you in so and so,' he said to some of his personal staff—some of his youngsters." (Page 189 N. R.)

That testimony is exactly in accordance with what I suppose to have been Gen. McDowell's real conduct on that day. I suppose that Gen. McDowell recollected the fact that Gen. Pope knew on the morning of the 29th that Longstreet's forces were coming to the battle-field; that he knew Gen. Pope clearly understood that Ricketts had retreated from Thoroughfare Gap on the night before on account of Longstreet's forces. I suppose he knew that it was not Gen. Pope's purpose to fight a general battle at that point. Therefore he felt that this force in his front being so formidable, if he made an attack with any expectation of success he must make it with a very heavy force, and that it would be necessary to make it in such a way as practically to have brought on a general engagement, and the question which presented itself to Gen.

Porter and Gen. McDowell was, Shall we make an attack, knowing as we do that Longstreet's force is in our front, in such a way as to bring on a general engagement? Can we do so consistently with the directions which have been given us to keep ourselves in a position to fall back behind Bull Run to-night? After discussing this question, it having been determined previously by them, as Gen. McDowell himself says, that they could not move any further towards Gainesville, Gen. McDowell came to the conclusion that practically the conditions had so changed that the binding force of the joint order had ceased, and that they were then to do what in their judgment seemed to be the wisest and most judicious, with a view to promote the best interests of the cause which they were serving. I think that is the true construction to put upon the conduct of Gen. McDowell at that time, and when he determined to take King away it was with that view, and under those circumstances, and when he said to Gen. Patrick that Porter had gotten as far as he could go, he meant that he had gotten as far as he could go, for the reason that the enemy which confronted him was in point of force such as they ought not to attack, and that he intended leaving Porter there for the purpose of keeping that force in check while he went around to the Warrenton pike for the purpose of putting his men on the left of Reynolds. Indeed, as it appears to me, it is the only construction that can be consistent with an honest intent on the part of Gen. McDowell in the course pursued by him. But this is not all.

Gen. McDowell was examined before you, as to this order which he says he gave. You will recollect that after a good deal of that sort of work which my friend Mr. Choate had with Gen. McDowell on this subject, he asked him this question :

“Q. What kind of an engagement did you expect him, that is, Gen. Porter, to enter into while no other but artillery fighting was going on along the rest of the line?”

(I have not referred to that portion of Gen. McDowell's testimony in which he admitted when he was examined at Governor's Island, that that 'raging' fight that he had made so much of in his original testimony was only artillery firing.)

“A. As I have tried to make myself understood on several occasions, the nature of the particular kind of contest which he was to engage in was not a matter which I ventured to impose upon him. As a distinguished and zealous officer, with his corps under his command, I did not venture to do anything more than indicate the place where I thought he was to apply that force. Whether he was to skirmish or have a very deep line, or extended one, was a question which I did not go into at all, nor think of going into.

“Q. Then a skirmish line would have answered your expectations when you left Gen. Porter, if in his discretion that was more advisable?

“A. It would depend upon the nature of the skirmish, how it was done, how vigorously carried out, whether the circumstances required it, and it only. It depends upon a great many things that you must make a great many suppositions about, before I can give an intelligent answer. If you want to know a general principle, I believe it is laid down by military writers that a body of men should be in a condition to offer battle or

decline it; whether the main body shall be advanced or retire on the reserve, and many other positions, all of which are conditions upon which battles are determined.

“Q. And determined upon the discretion of the corps commander?”

“A. Yes, provided he acted energetically.

“Q. Provided he acted according to the best of his discretion as a soldier?”

“A. Yes, sir.”

That is only a restatement of what he had said previously. In other words, after having given the court-martial to understand, after having convinced the court-martial, so entirely satisfied them that they were willing to found a judgment upon it, that he had given Gen. Porter an order to attack, to the same effect as the order given by Gen. Pope at 4.30 P. M., that he had given him an order to attack, the effect of which attack would have been to secure a victory to the army under Gen. Pope; that he had given him an order to attack, the effect of which would have been to crush Jackson and probably capture his army; this is what Gen. McDowell gave that court-martial to understand as what he meant when he said that he told Gen. Porter, “Put your force in there;” Yet, when he is cross-examined before you, he says that a *skirmish line* would have satisfied his expectations under that order, if Gen. Porter had deemed that wise and discreet. Think of it for a moment. Here is an intelligent man, an intelligent and accomplished officer; an officer who has had the best military education this country affords; an officer who has been educated under auspices which I have always been led to believe were, in point of honorable tone, the very highest that could be obtained; an officer who had had the largest experience at that time, probably, or as large as that of almost any other man in the army; a man who had filled the very highest position in the army when the war first broke out; you have that man, the trusted chieftain under Gen. Pope, the man upon whom he had relied in that campaign more than any other, and who probably understood more about that campaign than any other man did, you have him impressing upon the court-martial and reiterating the statement in all the various forms that could produce an impression upon their minds, that he had given this order imperatively to Gen. Porter to make this attack—plainly, distinctly, and pointedly—and that the effect of that attack would have been to secure a triumph for the Federal arms and crush the rebels whom they were seeking to destroy. You have him now, after the effect had been produced by that testimony; after the sentence of the court-martial had been founded upon this declaration that he had given this order to Gen. Porter; after that sentence had been pronounced and confirmed, and after the petitioner has been enduring this sentence for sixteen years; you have him now stating that a *skirmish line* would have answered the expectation of that order, “provided he acted according to the best of his discretion as a soldier.” Solomon says, that “a word fitly spoken is like apples of gold in pictures of silver.” If Gen. McDowell had spoken that word “skirmish line” sixteen years ago, it would have been “fitly” spoken. If he had spoken that word sixteen years ago, I believe Gen.

Porter would not have had this judgment pronounced upon him. The court-martial would not have found as they did, if Gen. McDowell had said, sixteen years ago, that which he said at Governor's Island, that a "skirmish line" would have answered his expectation under that order.

I have said that Gen. McDowell was in my judgment more responsible for the conviction of Gen. Porter than any other witness. I think that Gen. Porter's conviction rests more upon Gen. McDowell's testimony upon this one single point, than anything else in the whole case. So far as Gen. Pope and Gen. Roberts and Col. Smith were concerned, they were giving but opinions; they knew little of the actual facts; they took their facts mainly from what Gen. McDowell said. It was surmise or speculation or hearsay with them, but with Gen. McDowell it was knowledge. They did not know that Gen. Porter had not reached a point beyond Dawkins' Branch; they believed that he had, and they were led into that belief by the fact that Gen. McDowell stated that Gen. Porter had reached a point so near the Warrenton pike that no large force of the enemy could have interposed between him and the pike; they were led into that belief by the fact that Gen. McDowell stated Gen. Porter had reached a point three miles beyond Bethlehem Church; and the Board will recollect that Gen. McDowell is the only witness who says that Gen. Porter had reached three miles beyond Bethlehem Church. They did not know that Gen. Porter had thrown out his skirmish line and was deploying his troops in line of battle upon Dawkins' Branch when McDowell came up. They did not know that he had said, "Porter, you are too far out; this is no place to fight a battle." They did not know that he had sent word to Porter, he had better remain where he was, but if necessary to fall back, he could do so on his (McDowell's) left, and he would take King with him. They had not seen the evidences of a strong force of the enemy immediately in Porter's front. They did not know that McDowell and Porter had discussed the joint order, and that McDowell had concluded that the force in front was such that Porter had got as far as he could go, or as he ought to go under that order, towards Gainesville, and that practically they must abandon the expectation of carrying out the joint order in the manner that they understood it. But further than that, they did not know, and I do not suppose that any human being outside of Gen. McDowell knew, until he was examined at Governor's Island, that when Gen. McDowell pretended he had said to Porter, "put your force in there," he meant that a *skirmish line* would be sufficient to answer his expectation. Turn this evidence which way you will, I submit that you will find the conviction of Porter, and the findings of the court-martial, and the sentence which was inflicted upon him, have for their foundation the testimony of Gen. McDowell. And I think, turn the evidence of Gen. McDowell which way you will, that the foundation gives way in every direction. It is no wonder that this campaign was a "nightmare" to him. He knew that a companion in arms of high rank had been unjustly convicted of heinous military crimes, upon his testimony.

I may not be able properly to comprehend this testimony, its meaning and its effect. I may possibly do Gen. McDowell injustice. I am sure I do not wish to do so. But in considering his position in relation to

this case, I feel that it is the duty of counsel to assist the Board to arrive at truth. No advocate can afford to devote himself, if he is to accomplish any success in life, to causes which have not truth for their foundation. The peculiarities of this case are such that under no possible circumstances, I think, could Gen. Porter's counsel afford to do anything else than to make their best efforts to assist you in so digesting this evidence, and so analyzing it, and so examining it, as to arrive at correct conclusions. And I can say conscientiously, that in endeavoring to arrive at the testimony that had most effect upon the minds of the court-martial, and to have produced the greatest impression upon the mind of the Judge Advocate, and through him, upon the President, this testimony of Gen. McDowell to which I have been referring, has appeared to be that which struck the fatal blow. It does seem to me that if what Gen. McDowell stated on his examination before you be true, that a "skirmish line" by Porter would have satisfied his expectations at the time that he says he gave this order, "Put your force in there," then, his recollection of the words which he used before the court-martial must have risen year after year, day after day, hour after hour, to plague his conscience, and make him feel the deep wrong that he had done to his comrade in arms.

He knew he had sworn that Porter had reached a point at least a mile or more in advance of his real position, and thereby laid the foundation for the charge against him of having retreated.

He knew he had sworn that he had ordered Porter to attack with his whole force; that he had sworn he did not know what forces were in Porter's front; that the distance between Porter's front and the pike was such that a large force of the enemy could not be between them; that the battle was raging to the right and east when he and Porter were upon Dawkins' Branch; that Porter was near enough to the Warrenton pike to have attacked; that the effect of an attack by Porter on the 29th would have been to secure a victory; and he knew that the whole effect of his testimony was to induce the belief that Porter had been most grossly insubordinate and derelict in duty. He knew all this, and he knew further that if he had related the facts as they really were, the effect would have been just the reverse.

He knew, too, that Porter was determined to have the case reopened if it could be accomplished, and, if he succeeded, the truth would be brought to light. It was this consciousness of impending danger of exposure which was the nightmare that disturbed him.

I have endeavored to show you that it could not have been possible he gave such an order to Gen. Porter. I do not know that it is necessary to argue it any further; because when Gen. McDowell stated, as he did, that a skirmish line would have answered his purpose, you can see that as a matter of course the whole superstructure which was erected upon the allegation that he told Porter, "Put your force in there," meaning thereby that he should attack, crumbles away. This was the most material error made in the trial. If you concur in the views I have expressed, then I submit that you will find it proper to give to this point the full measure of importance which I have accorded to it. And if you take that out of this case, with the evidence which you now have before you, as to the time at which the 4.30 P. M. order was delivered, I submit that there is nothing left of it.

THE ERROR OF SUPPOSED RETREAT OF GEN. PORTER.

I now pass to what seems to me to be very clearly another error that had a marked effect upon the minds of the court-martial—I have alluded somewhat to it already: the supposed retreat of Gen. Porter.

On page 308 of the Court-Martial Record, the Judge Advocate says, that Gen. Porter wrote a note to Gens. McDowell and King announcing a determination to withdraw, that is, retreat to Manassas, because of the approach of the enemy, and because the battle seemed to be going against the Federal forces.

And then he says:—"That this purpose was promptly carried out, substantially, if not to the letter, is made evident from the fact that at between five and six o'clock the accused was found at or near Bethlehem Church, surrounded by his troops, whose arms were stacked." This proof as to the arms being stacked was made by Douglas Pope.

In looking at that old map [map of N. E. Virginia, the one used by the court-martial] it appears to me that the court-martial must have come to the conclusion that Gen. Porter with his whole force was back here at Bethlehem Church, or that Gen. Morell was up here [at M 3 beyond Dawkins' Branch] and that Gen. Porter had gotten back here with some portion of his men [near Bethlehem Church] and that there were no troops between. I do not know whether that is a correct understanding of what they believed to be true, but it seems to me from the remarks made by the Judge Advocate that that was what was meant. He says, that the accused was found at or near Bethlehem Church surrounded by his troops, whose arms were stacked. Now, whether he means that all his troops were there, or not, I do not know. If he does, as a matter of course, we know that is clearly a mistake. The fact that Gen. Porter was at Bethlehem Church and that some of the troops were there, is not only true, but it is just the position that Gen. Porter has always contended they ought to have been in under the circumstances; that is, from the time that Gen. McDowell left Gen. Porter with the understanding that Gen. Porter was to take no further action, but was to remain in the position in which he was placed, holding the enemy in front of him in check as far as he could. Gen. Porter planted himself at Bethlehem Church, as being the position in which he could most readily communicate with Gen. McDowell or Gen. Pope on the Warrenton pike, and with Gen. Morell, and the front of his forces upon Dawkins' Branch. Syke's division extended from Porter's position along the road to and in support of Morell.

I suppose that to an officer who knows what is to be done with arms when soldiers are not engaged, to say that the men were there with their arms stacked would not convey the impression which it seems to have made upon the mind of the Judge Advocate. The Judge Advocate could hardly expect soldiers to stand with their arms in their hands all the time, and I suppose there was no more convenient method of disposing of them, while the soldiers were at rest, than to stack them. Therefore, stacking arms under those circumstances would mean nothing. Yet the Judge Advocate has made the point that they were there with their arms stacked. Apparently he seems to have thought that Gen. Porter was there without the main body of his troops. Now,

if he thought that, you will see how clearly it must have been an error on his part; and, how manifestly delusive must have been the effect upon his mind, of the class of testimony to which I have been referring, and how great must have been that effect, when it could induce a man of such intellectual strength, and one who had his familiarity with those subjects, to adopt the idea that, from the fact that those arms were stacked, it should be inferred that Gen. Porter had retreated back to that point. I think the only way of accounting for it is by supposing that the poison which had been infused into his mind, and into the mind of everybody who was connected with this case at that time, was such that no matter what was said, if it only seemed to reflect upon Gen. Porter and his position, it was believed, it was credited, it was received as a verity, without being questioned, examined, or analyzed.

The Judge Advocate relies, for proof of this alleged retreat, upon the testimony of Capt. B. F. Smith, subsequently appointed a colonel of an Ohio regiment, who was in the front, as he says, at the time of the artillery firing, and alleges that he and the troops of his command then fell back under orders to within a mile or two of Manassas, where they passed the night, having arrived there in the afternoon. The Judge Advocate relied upon Col. Smith—not Mr. Choate's friend—and Capt. Douglass Pope, and a third witness, Gen. Griffin. I think those are all that he cites for the purpose of proving the retreat. Now the account which Col. B. F. Smith gives of it is this:—

“Later in the day, in the morning, we retraced our steps to the branch railroad running, I think, towards Gainesville or Manassas Gap, and followed the direction of that road some few miles. We then halted on some rising ground, where we could see the country beyond, over the woods, the tops of the trees. It was a wooded country. While we were halted there a battery of the rebels opened upon us, but fired some three or four shells only, I think; there may have been half a dozen. Our brigade then marched into a field, and the regiments were placed in order of battle.”

I should have said that he belonged to Sykes' division, and was captain of a company.

“Our brigade then marched into a field, and the regiments were placed in order of battle. I recollect that Gen. Morell's division was in our advance, on the lower ground. Some of our pieces replied to this rebel battery. I received permission from the commanding officer of my regiment to go to a more elevated piece of ground, a few rods distant, and while there I saw our batteries reply.

“A short time afterwards (probably a half an hour) we received orders to retrace our steps, and march back in the direction we had come. We then marched back to near Manassas Junction,” (I suppose that this is what produced the impression upon the mind of the Judge Advocate of a retreat,) “and camped in the woods alongside this branch railroad I have mentioned. That night I was placed on duty as the field officer of the pickets of Sykes' division. About daybreak the pickets were called in, and we marched towards the battle-field of Bull Run, and were engaged in that battle.”

Then he says, on page 113:—

“Q. Look at the map before the court, if you please, and point out the place if you can? A. (After looking at the map), I recollect that where our brigade lay the railroad was in view, and also the road we took next morning.”

That, of course, indicates very clearly where it was.

“Q. According to the measurement upon the map, an inch to the mile, how far is that from Manassas Junction? A. It is probably some two miles.”

Two miles from Manassas would bring them to Bethlehem Church.

Thus you will see that this Col. Smith was simply marched back, first having been moved up to the front in Sykes' division. We know that a portion of Gen. Sykes' division was moved up to the front and a portion, if not the whole of it, deployed to the left of the road and subsequently marched back near to Bethlehem Church, and there kept in connection with Morell during the day, camped at night, and moved off the next morning to the Bull Run battle-field. Col. Smith was asked this question:—

“Q. Was there or not any such display of the enemy's forces as to make it necessary, in your judgment, to retreat before them?

“A. I had no means of knowing. When we moved back from that position I supposed it was for some proper cause, but I did not understand at all what the cause was. I did not *receive any impression that we were retreating from the enemy*. I supposed that we were making a reconnoissance to feel the enemy in that direction, and, having found him, that we had moved back for some other purpose; and not knowing about the orders to the general, I remained under that impression.”

Now it does appear to me that when this testimony of Col. Smith is read there can not be found in it the slightest evidence of a retreat. It is simply a description of a movement which you know to have been made by Sykes' division—that he first moved up that road, deployed in part, then retraced his steps and remained in support of Morell during the rest of the day. The witness says himself that he did not receive the impression that they were retreating. They merely moved back on the road and remained there in support of Morell.

The next witness upon whom the Judge Advocate relies to prove retreat, is Gen. Griffin. The Judge Advocate on page 308 (O. R.) says “it is yet further shown by Gen. Griffin, examined by the accused, who says his brigade retreated from a mile and a half to two miles.” Now I will read what Gen. Griffin did say, and see how far that statement of the Judge Advocate is sustained.

“After the conversation,” that is, the conversation between Gen. McDowell and Gen. Porter, “General McDowell rode to the right. I received an order, almost directly after Gen. McDowell had left, to recall my pickets, and orders to remove my command to the right. I attempted to go to the right, and moved probably six hundred yards,

until, with the head of my column, I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through. It was reported by somebody, I can not say who, 'You can't get through there.' We then faced about, and moved back to the hill where the battery I first referred to was stationed."

Let me say that that battery was Hazlitt's battery, which was posted upon the right of the common road.

"My brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing; I can not say how long. The disposition was certainly one to repel an attack. It was a very good position for that purpose."

* * * * *

"Q. What then took place?"

"A. We had started back towards Manassas Junction when this order came down the road. The order was carried by an orderly, and was stopped by Col. Warren, who read it. We faced our command about immediately and started back. We were probably a mile and a half or two miles from the position referred to in my previous testimony as occupied by this battery. After I had faced my brigade about, I rode ahead to Gen. Morell, who had received the order, and asked him if he was going to attack. He replied in substance: 'No, it is too late; and this order has been given under a wrong impression.' I do not know but that, in justice, I ought to state what the substance of that order was. The substance of that order was, 'That the enemy are retiring or retreating; attack and pursue him vigorously.' That is, as nearly as I can recollect it, the substance of it; General Morell said to me, 'Colonel Marshall, who commands the pickets in front, states that the enemy are receiving reinforcements.'

* * * * *

"Q. Did your command spend the night in the place they then occupied, or very near it?"

"A. Yes, sir."

Then again:

"Q. You have been asked how far you went when you were retreating on the evening of the 29th. Did you understand your corps to be *retreating at all that night*?"

"A. No; I do not know that I did. I supposed that we were going to change position somehow; that we had failed to get through on the right during the day, and that we were going to shift to some other position; where I did not know. We did not connect with anything on our right or on our left."

It is quite manifest from the testimony of Gen. Griffin that this was simply a strategic movement. Neither of these witnesses testify, nor is there any testimony, nor was there any testimony before the court-martial which showed that there was any change in the skirmish line in front of Gen. Porter, or of the batteries, from the time he arrived upon Dawkins' Branch, and threw out his skirmish line, and planted that battery—Hazlitt's battery. There never was a change in the position of that battery or of the skirmish line, from that time until he left that position the next morning; and further, the division of Gen. Morell remained in

support of the battery and in connection with the skirmish line, during the whole day and until the next morning, and the division of Gen. Sykes remained in support of Morell.

I suppose—and again my ignorance upon such subjects must be my excuse if I happen to make a mistake—that, practically, there can not be a retreat of an army if its skirmish line and batteries, and the divisions in support of them, do not retreat; and if it be the fact that Gen. Porter's skirmish line and his batteries remained in substantially the same position from the time he arrived at the most extreme point up to the time at which he left there the next morning, and both his divisions also remained in support of them, then, I suppose, these facts are an absolute and unqualified answer to the charge of a retreat.

The fact that there was no change in his skirmish line—I do not mean that the skirmish line itself had not fallen back or moved forward—but that there was no material change in the skirmish line, and that those batteries did not fall back, and the divisions remained in support, I suppose, as I say, is an absolute answer to the charge of a retreat. That the court-martial were led into error on the subject is probably not remarkable when you find that they began with the proof that the distance from Bethlehem Church to Gen. Porter's front was three miles.

As a matter of course, starting with that as the point to begin with, then the conclusion that he had fallen back (in point of fact he was only two miles from Bethlehem Church that night) would be irresistible. Now that he did not do so, that he held on to that position, that Gen. Porter regarded that position as eminently one to be held, there can not be any sort of doubt; and that he clung to it, believing that it was probably the most important strategical point connected with the position of the Army of Virginia at that time; and to show that he did so believe, and that he felt it was important it should be held, and that he should keep the enemy in check there, I wish to read to the Board from Gen. Porter's defense before the court-martial. It has been read once to you, and of course you have heard the whole mass of testimony; but probably the effect of any particular part would not strike your minds as it would now, when you are so much more familiar with the case than you could have been at that time. In the defense which was made by Gen. Porter before his court-martial, and which is to be found on page 287 of the old record, Gen. Porter uses this language: “ * * or that I pushed on “ towards Gainesville on the morning of the 29th as ordered, or that I “ held my all-important position through the anxious afternoon of that “ day to divide and distract the enemy, and hold his massing forces in “ check; or that on the morning of the 30th I plunged into the thick of the “ fight while that same enemy, which I had confronted and held from “ advancing the day before, moved swiftly on just as when, under the “ imperative order of 8.50 P. M. of the 29th, I left my strong posi- “ tion and thus opened his road, I feared he would move to make his “ furious onset upon our left flank. Personally I was glad to be with “ my corps when the fight raged on the 30th. But I state my delibe- “ rate judgment, as a military man, that, but for that peremptory order, “ I had no right to be there. It was a false military movement. My “ post of real military power was the rising ground which Morell's

“ division, backed by the rest of the corps, was holding. Had we been permitted to hold on there, the terrible attack upon our left flank upon the 30th would never have been made. I could and would have stopped it there as I did stop it the day before. If the Major-General late commanding the Army of Virginia, whose Inspector-General is, at least, my nominal prosecutor, here doubts the truth of what I now say, let him produce if he can, as I asked him to produce at the trial, the note which I sent him by Capt. Douglass Pope at dusk in reply to his order of 4.30 P. M. of the 27th, directing me to attack Jackson’s right, and he will then learn, or at least recollect, what I at that moment judged concerning both the position of the enemy and my own. Let him publish that note since it has not been produced, if he can even at this late day find it, and then all who choose to compare that note with what I have just stated will know that the military theory of the position which I now express with all confidence, has ever since that day remained in my mind unchanged.”

That was what Gen. Porter said upon his former defense as to the position which he then occupied. Gen. Pope did not produce that note upon that hearing; he did not produce it when asked to do so by Gen. Porter in his defense. He did not produce it when asked by us to bring it before you, and it does appear to me to be a very extraordinary thing that any man occupying a responsible position, whether military or otherwise, should not be able to produce the notes and dispatches and letters which he receives upon important business. I suppose that it is the duty of the officer in command of an army to preserve the correspondence between him and his subordinates; I suppose that it is the duty of his staff carefully to see that they are preserved. I suppose, further than that, the correspondence between the commander of an army and his subordinate officers is the best picture that could possibly be given to the persons who are endeavoring to ascertain what the true scenes and events are, and the true relation which one event should bear to another. I suppose that if to-day we could have forced from Gen. Pope, Gen. Porter’s dispatches, the dispatches which he was sending on the night of the 27th, and the morning and afternoon of the 29th and the evening of that day—if those dispatches could be produced before you, that they would show to you what was Gen. Porter’s real position in these transactions better than it is possible for you to ascertain in any other way.

They would explain also why it was that Gen. Porter did not remonstrate further with Gen. Pope against leaving that position on Dawkins’ Branch. They would show that he had already said all he could say on the subject, and further effort in that direction would be useless. Now, why have not these dispatches been produced? Why were they not produced upon the trial before that court-martial? Is it possible that they were lost? Will anybody credit that statement? Can it be supposed for one moment, that a commanding officer receiving dispatches from the commander of a corps, and against whom he says he had already been put upon his guard, in reference to transactions which he himself was feeling at that time might be the subject of complaint upon his part; dispatches received after, as he says, he knew that that commander had disobeyed one of his orders—is it possible that

he would not have preserved those dispatches? Is it possible that he could not have laid his hands upon them when the court-martial was held some three months afterwards? Is it possible he has not them to-day? Will anybody credit the statement that the commander of an army, under such circumstances, does not preserve, and has not preserved dispatches of this character from such an officer?

It is proved that the dispatches relating to that campaign were in Gen. Pope's possession. (See Gen. Ruggles' evidence, page 281, N. R., and Col. Smith's evidence, page 345, N. R.)

I think that a witness standing in the attitude in which Gen. Pope did towards this case, standing in the relation which he did towards Gen. Porter, when he says that he can not produce dispatches of this character, when he knows how essential those dispatches are to the ascertainment of the truth, places himself in such a position that every word he utters must be received with caution and care, and scrutinized for the purpose of determining whether the statement which he makes is corroborated, or consistent with the testimony of other witnesses, and of the facts in the case, before it can be accepted as true. Gen. Pope testified to the effect that Gen. Porter had retreated. That was the inference from his evidence. We maintain that if Gen. Pope had produced the dispatch which was sent in reply to the 4.30 order, it would have demonstrated the mistake as to Porter's alleged retreat. But instead of bringing that or any others to light which would have been of service to Porter or tended to sustain his defense, Gen. Pope parades the one to McDowell and King. And why? The answer is to be found in Pope's testimony, and the revise by the Judge Advocate, viz., Because it was supposed that dispatch proved the charge of having retreated. It served a purpose which would have been thwarted if the reply to the 4.30 order had been before the Court. If he preserved the one tending to show Porter's retreat, is the presumption not irresistible that he had the others and withheld them for a purpose? I submit that every inference is to be drawn against a witness who occupies such a position in regard to important written evidence.

As I have shown elsewhere (*ante* page) the dispatch to Generals McDowell and King was sent probably between three and four o'clock, when from the indications of the artillery firing, Porter became impressed with the belief that Pope was carrying out his purpose to fall back behind Bull Run, as expressed by him in the joint order. If Porter did so believe, it would have been criminal on his part to have remained in that exposed position after the other troops had withdrawn. The moment he formed the purpose, he communicated it to McDowell to be forwarded to Pope. But he said he was going to the front to see what was passing, and would communicate. What information he did obtain, or from what source, cannot now be shown.

But when the dispatch to McDowell and King is read in connection with the subsequent orders by Porter to Morell, it is apparent that the purpose to fall back was not carried into effect. At or about the time of sending the dispatch to McDowell and King, he sent No. 28 to Morell. Its purpose was to aid Sigel in falling back. This, however, was not acted upon. Immediately afterwards, and before any action was taken under it, he sent the despatch No. 33 to Morell, "Hold on if you can

to your present place. What is passing?" Not a movement was made towards a retreat. In proof of this, I refer you to the evidence of Generals Warren, Sykes, Morell, Buchanan, Butterfield; Colonels Locke, Marshall, Johnson; Majors Earle, Hyland, Davis, Randol, Weld, Baker, and every officer of Porter's command who was examined before this Board. They all state there was no retreat and no movement in the nature of a retreat. But more than that, we have now established beyond cavil the movements and position which was held by the whole of Porter's corps from the time of arrival upon Dawkins' Branch until the withdrawal at 3 A. M. of the next morning. This proof absolutely and positively negatives the possibility of a retreat. I do not lose sight of what Gen. Sturgis said as to his falling back to Manassas. Even if he has not made a mistake as to the fact, yet that it was not a movement by way of retreat is shown by the other fact that no part of the remainder of the corps made any such movement, and that Gen. Sturgis himself moved back again to the position of the other troops, and so remained until the next morning.

I suppose that it is entirely clear, and must be entirely clear to this Board, that there was no retreat at the time, upon the part of Gen. Porter's corps; that there can be no sort of doubt about it. And yet, as it appears to me, without any real evidence before the court-martial to sustain it, the Judge Advocate says on page 309 (O. R.): "He fell back precisely at the moment that the obligation to co-operate, which was pressing upon him, required him to advance, and his march was not towards, but from, the sound of the enemy's cannon." I can not well conceive of a more illogical deduction from the facts as proved than this. He was not marching at all. Practically he did not change position from the time he first arrived upon Dawkins' Branch until 3 A. M. of the next day. Of course the movements back and forth of the regiments already referred to was not a change of position of the corps. He did not fall back. Gen. McDowell came up to the head of the column when and where it first halted upon Dawkins' Branch, and had his interview there with Porter. The column did not advance beyond that point, except with its skirmish line, and it did not fall back from it until 3 A. M. of the next morning.

What warrant, then, was there for the Judge Advocate's statement that he fell back, and "his march was not towards, but from, the sound of the enemy's cannon?" It is only one of the many signal illustrations to be found in this record that the inferences drawn from the testimony bore no necessary relation to the facts as proven. It is not a question about which anybody, under the evidence as it now stands, can have a doubt. I have been endeavoring to show the Board why it was that the court-martial fell into the error. I would not consider it necessary to prove to you that there was no retreat; that is so clearly established that no argument is necessary. That the Judge Advocate and the court-martial fell into that error there is no sort of doubt. They mistook an inchoate purpose for an accomplished fact. This was one of the accusations of which Gen. Porter was found guilty. President Lincoln was speaking in reference to it when he made use of the harsh expressions testified to by his son Mr. Robert Lincoln (page 902, N. R.).

He either read or quoted the note to McDowell and King, and under the conviction that Porter had retreated or fallen back as indicated by that note, he was very "strong in his condemnation." The case was presented to President Lincoln with the bald naked fact that this dispatch had been sent, and that Gen. Porter had retreated. Not a fact to controvert it was laid before him. Of all the dispatches sent by Porter to Generals Pope and McDowell on that day, this alone found its way to the inspection of President Lincoln. I have spoken elsewhere of the atrocious wrong to Porter in withholding other dispatches. The want of fairness involved in their concealment is yet transcended by the production of this one without the light to be shed upon it by the others.

Nor can it excite any surprise that President Lincoln did so express himself. He had that dispatch before him, isolated as it were from all its natural relations. No more certain or dangerous presentation could have been made to him. So far from the testimony of Mr. Robert Lincoln being adverse to Gen. Porter, it sustains in the strongest manner our allegation that the facts as they really existed were never submitted to or examined by President Lincoln.

We now appeal to you to reverse this error which was entertained both by the court-martial and President Lincoln, and to place the facts in their true light.

ERROR AS TO TIME OF DELIVERY OF 4.30 ORDER.

Now we come to the consideration of the 4.30 P. M. order which has been read to you. That was one of the charges and specifications against Gen. Porter—that he had not obeyed that order by attacking. I have no doubt myself that if the order had been received earlier, or early enough to have made the attack, Gen. Porter would have made it. He supposed the dispatches he had been sending during the day had reached their destination. He supposed the facts as to his situation and McDowell's separation from him were fully known to Pope. Under these circumstances he believed it to be his duty to make the attack and made the effort, but was prevented by the lateness of the hour, as has been shown previously. Whether it would have been wise, whether it would have been proper or not to have obeyed that order literally, is perhaps a question that is not involved in this case.

Gen. Porter's position at the time was a very peculiar one; for the joint order was of such a character that it had produced a serious embarrassment, as I think I have shown you—at least as I have endeavored to show you. But, however that may be, the answer which is made by Gen. Porter as to this 4.30 P. M. order, is simply that he did not receive the order until it was too late to comply with its terms.

Gen. Sykes says, "Officer arrived as near sunset as I can remember" (page 177 O. R.).

Locke says the order was delivered "between sundown and dusk" (page 136 O. R.).

Monteith, "It was about sundown" (page 127 O. R.).

Wild, "After sundown" (pages 130, 132 O. R.).

Ingham, "After sunset" page 199 O. R.).

These statements are called "opinions" by the Judge Advocate, and he contrasts them with what he calls the "explicit and intelligent statements" of Capt. Pope and his orderly.

Let us inquire what these explicit and intelligent statements are.

Here again let me refer to the record. It would seem that the court-martial there relied entirely upon the testimony of Douglass Pope and Duffee, corroborated, as they say, by Gen. McDowell, Gen. Pope, and Gen. Roberts. That is the statement of the Judge Advocate upon page 309 of the court-martial record.

Gen. McDowell, and Gen. Pope, and Gen. Roberts knew nothing about how long it took Douglass Pope to ride from Gen. Pope's headquarters over to Gen. Porter's.

They could not have known anything about it, because Gen. Pope and Gen. Roberts only knew when he left. Gen. McDowell saw him shortly after he had left. No one of them was at Gen. Porter's quarters when it was delivered. Therefore they could know nothing about it. The attempt to give opinions as they did only shows how ready they were to say anything that would cast blame upon Porter. It comes back to and rests upon the testimony of Douglass Pope and Duffee—that is, Douglass Pope says that the order was delivered about five o'clock, and Duffee says 5.30. Now, opposed to that was the testimony of Gen. Sykes, Col. Locke, Capt. Monteith, Lieut. Weld, and Lieut. Ingham, who say that this order was received by Gen. Porter about sundown. Yet the Judge Advocate seems to have thought that Douglass Pope and Duffee were to be relied upon in preference to Gen. Sykes, and Col. Locke, and Capt. Monteith, and Lieuts. Weld and Ingham.

You will recollect that the testimony of Capt. Pope was, that he had ridden over in about half an hour. It does not require any accurate knowledge in reference to how far a man can ride in half an hour. We all know that ten miles an hour upon a good road is extremely rapid riding. I think, if I understand it correctly, that the limit to fast driving in Central Park—and I am sure in Fairmount Park in Philadelphia—is seven miles an hour. Yet, when you see a horse going at the rate of seven miles an hour over those roads, it is pretty rapid driving. Ten miles an hour is very rapid driving in a wagon; it is unusually rapid riding under any circumstances. It is such riding as probably could not possibly be done over such a country road as that was. Therefore, when Capt. Pope said that he rode that five miles in half an hour, it was enough in itself to have discredited the statement. If his horse had been entirely fresh and strong, and exceptionally fleet, possibly the horse might have made it. But it is more likely he would have either broken his own neck or that of the rider. It was enough to have made any intelligent man at once come to the conclusion that Capt. Pope was simply stating that which was not true—which could not possibly be true. Now, when you take the testimony of Duffee, his testimony in reference to the road that he went was reasonably fair, apparently, in the first instance; and the time which he said it took, was certainly much more likely to have been the truth, when he put it three-quarters of an hour or an hour. I forget which,—I think he said an hour.

If there had not been any countervailing testimony, such as that of Gen. Sykes, and of Locke, and of men who were immediately with Gen.

Porter, it would have been very difficult for Gen. Porter to have shown on the former trial that that order was not delivered to him at 5.30, because Duffee's statement of an hour to ride five miles would have been reasonable. But, when we take the testimony of Duffee and Pope, as it now stands, it is quite manifest that the court-martial were led to adopt and believe in reference to the delivery of the 4.30 order, that which was altogether erroneous. When Capt. Pope leaves the stand, and talks to his friends convivially, no doubt he states what was the truth; and that is the testimony which we produce before you by Col. Moale and Capt. Jones, who say that he stated he had lost his way; that he was two hours in making the route; that it was near dark when he reached Gen. Porter. Now, when you find that he has made these statements in reference to this transaction, what is the proper course to pursue with the testimony of Capt. Pope? Why, what you have to do, as I submit, is this: just simply strike it out of the case. When you find that a witness has sworn that he has done a thing within a given time, which is practically an impossible time according to ordinary experience of men, and then that subsequently he has told a story which is entirely inconsistent with it, and that instead of its being half an hour, as he said before the court-martial, he has made it two hours; that he has stated he was lost; I say you must simply, as it seems to me, strike his testimony out of the case. You must consider, so far as he was concerned, that the court-martial was imposed upon by Capt. Pope when he gave his testimony, swearing that he delivered the order within half an hour.

Col. Moale and Capt. Jones are officers in the regular army. They are known to you as officers of standing and character. They did not volunteer as witnesses in behalf of Gen. Porter. On the contrary, they were brought here through information obtained by Gen. Porter, to the effect that these statements were made in the presence of a number of officers, of whom they were two. No one who heard their evidence can doubt either its accuracy or their integrity. Their testimony of what Capt. Pope said is a striking commentary upon the utter recklessness that prevailed in the statements of witnesses before the court-martial.

Now, how is it as to Duffee? Duffee swore that he delivered the order at 5.30, and when he came before you he was disposed to change it, and make it about three-quarters of an hour instead of an hour. Then when put under cross-examination, he states that for sixteen years he was under the impression he had gone, if I recollect, in this direction down here [along Chinn's Branch], and passed through Five Forks, and found Gen. Porter over there [near Bethlehem Church]; that on the Tuesday preceding the time at which he was examined before you, he had gone down to this country with Col. Smith, and that he had ridden along this road [up the Warrenton pike], and then ridden along this way [the Sudley road], and that he had then learned for the first time in sixteen years that he had traveled *this* road along Chinn's Branch, down in a south-westwardly direction.

That is the most remarkable testimony I ever heard. I do not wonder at his change of base. I rather think that if Rip Van Winkle had had Col. Smith with him when he came down the mountains, he would not have been so oblivious of Falling Waters and its localities as he is represented to have been.

Then there comes another thing which is most extraordinary in this case, which seems to abound in marvels, and it is this: that although Capt. Pope and his orderlies were going along the Sudley road from New Market over to Gen. Porter, back and forth, from the neighborhood according to their own statements, of four and three-quarters or five o'clock until seven or eight o'clock, and although during that time the two divisions of Ricketts and King, numbering from fifteen thousand to seventeen thousand men, were upon that road, they did not see a man.

Now, I can not account for that; I do not understand what the blindness was that prevented Capt. Pope and Orderly Duffee from seeing those fifteen thousand or seventeen thousand men. I had forgotten Mr. Dyer, a man who saw a spire where it had never been, and who saw a church standing that had fallen into ruins a long time before, and a house six months before it was erected. He did not see the troops either. Here you have three of these witnesses to prove the delivery of this order to attack—this important order—and it was an important order; it was an order which had in it that which should have warranted these men in making an effort to deliver it promptly—and it was important in its consequences to Gen. Porter too. Here were these three men who swear that that order was delivered in a given time, that they traveled along a given road, and that they did not see a man, when we know that upon that road were marching at this precise time from fifteen thousand to seventeen thousand men under arms.

Is there any doubt about it? We have proven that King and Ricketts were moving upon that road. These men say they traveled along that road. Now what is the solution of it? It is, in my judgment, that when Gen. Ruggles gave that order to Capt. Pope to be delivered, they then believed, as the court-martial has found, and as Gen. McDowell has stated, they believed Gen. Porter was up in this vicinity [beyond Dawkins' Branch] and Gen. Ruggles, when he pointed to the position where he supposed Gen. Porter to be—pointed down here [in the direction of Chinn's Branch] that these men did start in this direction, and when they got somewhere here [that is in the vicinity of Comptons' Lane or Lewis Lane] I have no doubt they came in contact with some of the rebel scouts or skirmishers. I have no doubt that then they started back in order to escape them, and my own belief is they crossed the Sudley road about New Market and went up towards Manassas, and finally that they found their way down in this direction [along the road from Manassas Station.] There is no other explanation in my judgment of the fact that they found no soldiers upon that road upon which this large body of troops was then moving. These men were not in my judgment upon that road at all when they were going to Gen. Porter; that they went down in this direction was natural [along Chinn's Branch], because that is the direction Ruggles told them to go. How far, it is of course impossible for me to say; but I think that is corroborated by the fact that this man Duffee said that he supposed they had taken the Five Forks road. Hence it would be extraordinary that they should have just come down there, and then have turned and gone back [that is near the Chinn House]. There was no reason for their doing it; if their purpose was to go to Porter on Dawkins' Branch, or to the westward of it, they would naturally have gone down here in the direction of

Comptons' Lane. I take into consideration the fact that this was the direction in which they supposed Gen. Porter had gone; that this was the direction practically in which they first moved, and that this was the direction that Gen. Ruggles told them to go. When you bear in mind the fact that they did go back, and that they found no troops upon this road which they say they were traveling, the conclusion is irresistible that they did not get upon that road at all, except to cross it—that is the Sudley road; that they were lost; that they came in contact with the rebels, then came back, then came over to the Manassas road, and did not reach Gen. Porter, according to the statement of the witnesses called by Gen. Porter, until about seven o'clock.

On the one hand you have Pope, Duffee, and Dyer as the three witnesses who prove the delivery at 5 to 5.30 P. M. The first swears to a time which is the next thing to a physical impossibility—he is convicted of misstatement out of his own mouth by his declarations now sworn to by two reputable witnesses. The second admitted he had been guilty of wanton deception in his statement to Mr. Collins about this ride. He also stated that at the time he gave his evidence before the court-martial he supposed he had gone through the Five Forks, and yet by looking at what he then said you will see he was describing an entirely different route. And again he says that on the Tuesday before he was examined before you he had ridden along the Sudley road, and then had changed his mind and concluded he had gone along Chinn's Branch and turned to the left, and came into the Sudley road about New Market, and then proceeded on that road to Gen. Porter. He concluded he had been under a mistake for sixteen years, and that without even riding over the road along Chinn's Branch or through the Five Forks. His evidence before the court-martial was given under an entire mistake according to his own statement as to the route, and now he corrects it without either riding over the road he says he took along Chinn's Branch or the road he says he had supposed he had traveled through Five Forks.

The third swore before you that he had ridden over the route shortly before he was examined. He stated that he saw Gen. Porter come out of and stand near a tent. You know that Gen. Porter had no tent there. He swore that he had recognized as a landmark the small square house with the four-sided roof on Wheeler's place. You will recollect we proved by Leachman and Wheeler that house was not in existence in August, 1862, but was erected the following year. He swore that he had seen a steeple and spire on a church near Gen. Porter's tent. You will recollect that we proved by Leachman and Wheeler that Bethlehem Church never had a steeple or spire, and further that the building was in August, 1862, in ruins, and nothing left of it but debris and rubbish. These facts were simply coined by him on the witness stand. All three of these witnesses demonstrate that they did not traverse the route they pretend to have taken by stating that they did not see the troops of King and Ricketts on the Sudley road between New Market and the Manassas road. That is alone sufficient to convict them of having sworn to what was either ignorantly or willfully untrue. Pope and Duffee are the two witnesses whose "explicit and intelligent statements," according to the Judge Advocate, should outweigh the evidence of Sykes, Locke,

Monteith, Weld, and Ingham, that the order was not delivered until about or after sunset.

Was it not unjust to Gen. Porter in the last degree to have convicted him on the evidence of such witnesses when the truth was testified by such men as he called—men of undoubted character and integrity, who were present, and knew at what hour the order was delivered?

And now that Gen. McDowell has produced before you the dispatch from Porter, dated 6 P. M. (*ante*, page), and you have the clear light of its intrinsic evidence that the order had not been delivered at that time, does not the wrong done become so manifest that not even the keenest suspicion can longer harbor a doubt? That dispatch shows by its language that the 4.30 order had not been received by Porter at its date, 6 P. M. It speaks not with the tongue of man, yet its voice is more potent in uttering the truth than would be those of forty such witnesses as gave the explicit and intelligent statements so confidently relied upon by the Judge Advocate. It seems to me manifest that there was a mistake made in reference to the time at which that order was delivered; and there being such a mistake, that it is one which it is proper now to have corrected.

ERROR AS TO THE PRESENCE OF LONGSTREET'S TROOPS IN FRONT OF PORTER ON THE 29TH.

I have already referred to the opinions which were given by Generals Pope and McDowell and Smith and Roberts upon the trial of Gen. Porter, and I do not propose to dwell much further upon that except to call the attention of the Board to this, that there is the most extraordinary inconsistency in the statements which were made by Generals Pope and McDowell, especially with reference to one of the essential points which was under consideration before the court-martial—the question of the appearance of Longstreet's troops upon the battle-field.

I have already called attention to that which is most remarkable in Gen. Pope's position, which is, that when in his orders of the 26th and 27th he had recognized the near approach of Longstreet, and when he knew of Rickett's retreat from Longstreet at Thoroughfare Gap, and when he says in his testimony that he certainly expected the junction of Longstreet with Jackson upon the afternoon of the 29th, he, notwithstanding, should have inserted in the joint order the statement that the indications were that the enemy would not be up before "to-morrow night or the following day." And when you come to examine the testimony of Gen. Pope before the court-martial, and of Gen. McDowell also before the court-martial, you will find that they ignore the presence of Longstreet's force upon the battle-field.

Gen. McDowell in the course of his examination says:—

"A. I did not know anything about Longstreet's corps or Jackson's corps. * * * * *"

"To whom they (the forces spoken of by Buford) belonged, or to whom they were going, was not a matter of which I was informed." (McDowell, page 88, O. R.)

Then he says:—

“To have defeated Gen. Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and I think would have still resulted in a success to our side to our army generally.” (Page 97 O. R.)

“Q. (By the Court.) From your knowledge of the condition of things on the 29th of August, was there any considerable force of the enemy in front of Gen. Porter’s corps near the Manassas Railroad on the south side of it?”

“A. I have no positive knowledge on that point. I have not supposed that there was, but I can not support that supposition by any positive facts.” (Page 221, O. R.)

“Had no *judgment* whether the force in front of Porter all afternoon of 29th was the only force reported by Buford.

“*Did not go into that question.* I do not know or did not know. (Page 804, N. R.)

“Made no estimate of size of regiments reported by Buford. Did not know what the force was by number of regiments. (Page 798, N. R.)

“Did not know the force coming up there to be Longstreet’s force. (Page 774, N. R.)

“Can not say at what particular time learned Longstreet commanded that force. *Grew into knowledge* of enemy’s position, since that time. (Page 775, N. R.)

“On 29th I was told he (Longstreet) was there. (Page 775, N. R.)

“Now in doubt whether Longstreet was there or not. (Page 776, N. R.)”

In recurring to the facts, it will be found that in order after order issued by Gen. McDowell, he knew of the presence of Longstreet, first at Waterloo, and afterwards at White Plains—Waterloo being, if I recollect right, about twenty-eight miles from Thoroughfare Gap, and White Plains being only five miles from Thoroughfare Gap—that the presence of Longstreet in the vicinity of Thoroughfare Gap was recognized by him, and that he gave orders to Ricketts for the purpose of preventing Longstreet from coming through Thoroughfare Gap; that he recognized the near approach of Longstreet by his official acts to an extent which must prove, beyond all possible doubt, that Gen. McDowell should have known that Longstreet was marching directly for the battlefield, and practically was in front of him and Gen. Porter at the time they were upon Dawkins’ Branch. Gen. Pope recognizes this thing in the same way. Yet, before the court-martial, both Gen. Pope and Gen. McDowell ignore this fact, and convey the impression to the minds of the court-martial, not only that they did not believe that there was a force in front of Gen. Porter, but that from the circumstances there could not have been such a force in front of Gen. Porter as was alleged by him.

There is known in the law a state of mind which is described by a judge in a very able opinion as being collusive blindness—the condition in which a man is when defending himself from a charge, upon the ground that he did not know certain facts, when from his position and relation to those facts he must have known or ought to have known them. The learned judge says, that when such a condition exists, the

man must be "collusively blind," which means, in homely phrase, that none are so blind as those who will not see. Now I can not describe the apparent ignorance of Gen. Pope and Gen. McDowell in reference to this force of Gen. Longstreet better than as "collusive blindness." Both those men had their educations at this school, where I presume something is taught of multiplication, division, and subtraction, and I suppose it was possible for them to solve a problem according to the single rule of three. Knowing the position that Longstreet was in on the morning of the 29th, the road and direction he was marching, and the distance he would have to go, it would be very easy for them to determine where he would be at twelve o'clock in the day. Yet, with all these facts before them in reference to the presence of Longstreet, with their own declarations showing beforehand that they knew the facts, they gravely told the court-martial and led them to believe, that his force was not there to such an extent as seriously to impede Gen. Porter in moving along. For when Gen. McDowell is asked the question whether there was any insuperable obstacle to Gen. Porter continuing his march to Gainesville, his reply was, that there was none in his judgment to his marching, and that he could have marched. From what occurred on the battle-field the next day, I rather think that if Gen. Porter with ten thousand men had attacked Longstreet's twenty-five thousand he would have found a considerable obstacle, if not an insuperable one, and that in all probability, instead of having this investigation and that of the court-martial, he might have had the opportunity of spending some time in a southern climate.

But I suppose that if anything is established in this case, it is the fact that Longstreet was there with a force of not less than twenty-five thousand men, and that he was exceedingly anxious that Gen. Porter should make an attack upon him; that Lee wanted to initiate the attack, and that Longstreet wanted Porter to attack, because he felt that then he could have destroyed Porter's force, and after doing so, he could have swung around on Pope's left flank, as he did the next day, and the Army of Virginia would have been an easy prey. That the court-martial were in error as to the force of Longstreet in front of Porter is quite manifest from the views of the Judge Advocate.

On page 312 (O. R.) of his revise he says: "Now we learn from Gen. Buford that the enemy's forces passing through Gainesville that day from Thoroughfare Gap, and counted by himself, did not exceed 14,000 men, and dividing these into two columns, it is believed that at no time on the 29th could the accused have been confronted by a rebel force exceeding 7000—a little more than half the strength of his own corps."

It has been proven before you by Gens. Longstreet, Wilcox, Robertson, and Early, by Cols. Marshall, Blackford, and other witnesses, that Longstreet's force marched from Thoroughfare Gap on the morning of the 29th, passed through Gainesville from 8 to 9 o'clock, and took their position before 12 o'clock. That force, as proved by some or all of these witnesses, was at least 25,000 men.

Their line extended from a point a little north of the Warrenton pike to a point somewhat south of the road to Gainesville, on which Gen. Porter was marching. And as his front faced somewhat to the northwest, the whole of this force was either in his front or was in such a position

as to have been brought to bear upon him without difficulty. Gen. Porter then knew that was Longstreet's force, and he knew its numbers could not be less than probably 25,000 men. He knew it from the appearances before him. He knew it from Buford's dispatch. He knew, as every other intelligent officer in his position could have known it, from the fact that the rebel army was divided between Jackson and Longstreet in about equal numbers—that Jackson was already on the north of the Warrenton pike—that Longstreet was coming up to join him—that Longstreet was at Thoroughfare Gap on the morning of the 29th, and had an unobstructed march of only about nine miles to reach that position—and every reason existed in a military point of view to induce Longstreet to reach that point as quickly as possible.

In the main, these sources of information were open to all the officers of Gen. Pope's army at that time. But at any rate, all the information which Gen. Porter had was in the possession of the court-martial at the time of the trial. But it was in vain that Gen. Porter asserted the presence of Longstreet's force in overwhelming numbers in his front. In vain did he prove it by Marshall (Colonel of the 13th New York Volunteers and Captain in the regular army), and Morell and the other officers under his command, who saw the evidence before them of this large force. In vain did he reason with the court-martial upon the known facts as they then existed. A deaf ear was turned to it all, and they "believed (as was said by the Judge Advocate) that at no time on the 29th could the accused have been confronted by a rebel force exceeding 7000." How grave was this mistake, you can fully understand. How mischievous it was in its results to Porter, the record of the court, their finding and sentence, and the opinion of the Judge Advocate, bear most ample, and to Porter, most painful witness. Why should the court have fallen into such an error? I have looked over that record, and I am sure that Longstreet's presence is proven by the testimony then before them.

But more than that, one of the members of the court (Gen. Ricketts) had fled from that force on the afternoon or night of the 28th. Did he not know it? Did he not inform the court of the force from which he had retreated?*

It is perhaps difficult sometimes to prove anything, however clear the evidence may be. There are contingencies in which human nature seems to shut its eyes and its ears and to close its understanding against the simplest truths.

This record affords but one of the numerous illustrations that are found scattered through the history of man, of the proneness of our nature at times, and, under some circumstances, to hardness and unbelief.

* Since the close of the hearing the following fragment of a dispatch of August 29th from Gen. McDowell, at Manassas, to Gen. Pope, at Centreville, has been furnished to Gen. Porter:—

" * * * till late. This morning, I was told by Reynolds that King's div. was ordered to Manassas, and Ricketts' to Greenwich, and Sigel and Gainesville. Supposing these orders were from you, I left Reynolds on the left of Sigel, and came here to see you and get my two divisions. I find here that King came here on his own order, finding himself over-matched and *Ricketts the same*. King's div. is getting supplies of food and ammunition and will be ready to move soon. I have not heard from Ricketts this morning, but understand he is coming here. It was Gibbon's *brigade* that was engaged yesterday.

" Very respectfully,

" IRWIN McDOWELL,

" M. G."

There are also times when unclouded reason can resume its sway, and when facts can be allowed to have their due weight, and when justice can be meted out fairly, impartially, and fully.

We ask no more at your hands now, and I am sure your own sense of right will not admit of anything less.

ERROR TO HAVE FOUND THAT PORTER SHOULD HAVE MADE AN
ATTACK.

Now, should Gen. Porter have made the attack? I assume that from the time that Gen. McDowell left Gen. Porter, if not from the time they found that Longstreet's forces were in front of him, at any rate from the time they were separated, the joint order ceased to be obligatory upon Porter in many of its most important provisions. For instance, I suppose that he could not any longer think of going on to Gainesville. I suppose, however, that he was bound to think of the necessity of communicating, if possible, with the force upon his right; I suppose that he was bound to keep himself in a condition to fall back of Bull Run that night. But whether he was to attack or not was a question, as it seems to me, from the time that Gen. McDowell left him, wholly within his discretion. I think, then, it was for him to determine what his course should be, because the conditions under which the joint order was given were entirely changed, so far as the junction of the forces of McDowell and Porter was concerned, and also inasmuch as "the whole force of the enemy" had already arrived, instead of waiting "until to-morrow night or the next day," as was contemplated by the order.

The rule, as it appears to me, which applies to such cases, is well stated in certain extracts, taken from a French work recently published in Paris.

It is entitled "The Method of War," and the extracts which are translated will be found on pages 753, 754, and 755.

The reputations of Napoleon, the Duke of Wellington, and Archduke Charles, are such as entitle them to consideration.

This is from Napoleon I. :—

"A military order, even, requires passive obedience only when it is given by a superior who, being present at the moment when he gives it, has knowledge of the state of things, can listen to objections, and can give explanations to the one who is to execute the order."

This is from the Duke of Wellington; a general order from the camp of Jansen, November 11th, 1803:—

"In making known to the army the decision given by the Court Martial in the affair of Capt. * * * Major-Gen. Wellesley thinks proper to explain to the troops that it is necessary to well distinguish the cases in which it is allowable or not for an officer to act at his own will.

"It may frequently happen that an officer receives an order which through circumstances unknown at the moment of giving it by him who

gave it, is impossible to execute, or *the execution of which would be so difficult or so dangerous that there would be a moral impossibility to conform to it.* In a case of this nature, Major-Gen. Wellesley would be very far from wishing to prevent detached officers from acting freely.

“But Capt. * * * was not in that situation: he had and has had no private information which the officer who had given him his orders did not also have; and then it was his duty to obey.

“ARTHUR WELLESLEY,
(DEPUIS DUC DE WELLINGTON.)”

“Jourdain’s army having forced the passage of the Lahn (July 7th, 1796), the first intention of Wartensleben, who commanded the Austrian corps left before it [the Lahn] by the Archduke Charles, had been to fall back behind the Widda, because the French having found the garrison of Hamburg to fall back upon Usingen, were already threatening his line of retreat. But the 9th of July, having received a dispatch in which the Archduke wrote to him to withdraw from the environs of Friedburg, only *after having tried the fortune of arms*, he changed his design, and resolved to attack Jourdain that same day.

“However, Wartensleben, in his position at the time, should not have attempted an attack. He could in fact direct it only against the centre of the French army; since in moving his left, he left Jourdain at Hamburg on his rear; and in advancing by his right he abandoned his line of retreat upon Frankfort.

“In spite of these dangers he had the temerity to attack, and in what a situation! With forces inferior in number, in a position in which his wings, deprived of support and threatened with being constantly out-flanked, had no reserve.

“In vain will it be said that the order which the Archduke Charles had sent him was the ground of his resolution. *Wartensleben had the right not to execute it; the Archduke Charles, then near Pforzheim, did not know his situation when he gave him the order.*

“A general-in-chief who indicates to subordinates, detached afar, their lines of operations and the strategic points of their defensive positions, has performed his duties. One can not expect from him precise and detailed orders when their execution depends not only on the circumstances of the moment, but also on the actual position of the troops.

L’ARCHIDUC CHARLES.”

I should suppose there was great good sense in that, and that the rule is one which accords with natural reason. In this case Gen. Porter, I think, was acting practically under the rule laid down by the Archduke Charles. Ought he to have attacked? He thought he should not do so, as he knew the case. That he knew it, there can not be a doubt. There was something said, if I recollect aright, by the learned Recorder in his opening about Gen. Porter’s being tried according to the knowledge which he had of the presence of Longstreet’s force, as though he had not then a knowledge of them. There was hardly a witness examined before the court-martial who could be supposed to know anything about the subject, to whom the question was not put in reference to Longstreet’s

force. It is to be found all through the testimony; it is to be found in the defence of Gen. Porter; it is to be found in the opinion of Judge Advocate Gen. Holt. It was contended by Gen. Porter that Longstreet's force was in front of him—at least, there was an enemy's force there, which was designated as Longstreet's; not that they meant to say that Longstreet personally was there. I do not suppose anybody knew that he was personally present.

But the question which was involved in the issue before the court-martial, and the one which has been the bone of contention from that time to this, was, whether Longstreet's force of twenty thousand or twenty-five thousand men were present that day, communicating with Jackson, and extending from north of the Warrenton pike southwardly across the Manassas and Gainesville road, and formed in front of Gen. Porter, in such a way as that they could have enveloped and destroyed him, if he had been wild and insane enough to make an attack. That they were there is unquestionable. Whether they were on Page Land lane at nine o'clock or not; whether they had reached up to the Gibbon battle-field by twelve or one o'clock, exactly the position that they occupied at a given hour, may not be a matter of importance for us to establish. But the fact that they were there, practically in a position such as that if Gen. Porter had made an attack they would have thrown upon him that twenty thousand or twenty-five thousand men, I think is as clear as any question can be which has to be settled by testimony, and after the occurrence of the events. It is not a question that is dependent upon the witnesses whom Gen. Porter has produced. It is not a question dependent upon the witnesses produced upon the former court-martial, nor upon the witnesses produced before this Board. There is testimony in this case which seems to me to be conclusive upon this point, which was furnished by Gen. McDowell to Gen. Porter when he was at Dawkins' Branch at twelve o'clock when they were discussing the joint order, and that was the dispatch of Buford to McDowell, to the effect that those troops were passing through Gainesville three-quarters of an hour before that message was dated, which would bring it at about a quarter before nine o'clock that morning.

It is utterly idle for Gen. McDowell to endeavor to screen himself behind the pretense that Gen. Buford reported only fourteen regiments or seventeen regiments, and that he knew of no other force. Why, he knew that the whole of that force under Lee was at Thoroughfare Gap or at White Plains on the day before. He knew that they had made an attack upon Ricketts, and that they had been strong enough to drive him away; and he knew that Lee was moving in that direction with as much rapidity as possible for the purpose of reaching Jackson. He knew these facts; and it is perfectly idle for him to endeavor to screen himself from the censure which he must bring upon himself, by pretending that he did not know that those troops were there, when he had this message from Buford stating that those troops were passing through Gainesville; and he should have known—he must have known—his mind, if it acted at all, must have conceived the idea that Longstreet was moving with his whole force through Thoroughfare Gap, and on the way to the battle-field through Gainesville for the purpose of reinforcing Jackson. That being so, when the binding force of the

joint order had ceased in the manner in which I have indicated, when left to his own judgment and his own discretion as to what he should do, when he did not know that there was any heavy battle progressing, when he had not received from the commanding officer, Gen. Pope, any direction which led him to suppose that an attack upon his part was expected or was wanted or needed, or that the forces were in such condition as required it, when he had received intimations and directions from Gen. McDowell, or instructions, that the purpose was not to fight a battle there, but to fall back behind Bull Run, when he knew that he had this force opposed to him which, if he attempted to assault under the circumstances, would simply destroy him, and that therefore he would be exposing the left of Gen. Pope's army to destruction—when he knew these facts, what was Gen. Porter to do? He did what a discreet and prudent man should have done; he remained there in his position, endeavoring to feel the enemy by a skirmish line, giving information as rapidly as he could communicate and as frequently with Gen. McDowell as he could, making such movements as he supposed were necessary for the purpose of holding the enemy in the position that they were in; and, more than that, accomplishing that result.

According to the testimony of Col. Marshall (a member of Gen. Lee's staff), and of others, if I remember correctly, that force of Longstreet's was held in check during the whole of the 29th by Gen. Porter's position. But even if it had not been proved by witnesses then in the opposing force, the facts as you have had them established show that Porter did so hold the enemy in check. Thus he was accomplishing that which was of benefit to the force with which he was co-operating, the army to which he was attached; he was exercising the wisest and best judgment which he had under the circumstances when he was too far removed from the commander-in-chief to communicate immediately with him; he was using the judgment which he deemed to be proper under all the circumstances. And yet, after having passed that anxious day in the discharge of this duty, after having held this force of twenty thousand or twenty-five thousand men in that position that day, and having held them in a position so that if he had been reinforced, as he asked to be, he could, on the 30th, have prevented that disaster which overtook those troops; for doing this duty, for holding on there as he ought to have done, for taking the responsibility which he ought to have taken, he is arrested, tried, convicted, and sentenced to be dismissed from the army, and to be prevented from holding any office of honor or profit under the Government of the United States.

Under the rules laid down by Napoleon, by Wellington, and the Archduke Charles, quoted above, Gen. Porter could only be held responsible for the honest and faithful exercise of the discretion devolved upon him by the exigencies of the situation. I appeal most confidently for his vindication under this head to the history I have given of his conduct during that day. He did all that an efficient and intelligent commander could have done under the circumstances. By attacking he could not have drawn a man from the forces of Jackson that were confronting Pope's other troops; and he could not have added a tittle to any success by those troops. But in the light of all we now know, any such movement would have been disastrous not only to his own corps, but in all probability would have brought destruction upon the whole army of Virginia.

The joint order did not suppose an attack under the circumstances. The situation did not demand it—a proper exercise of his discretion did not permit it, and every consideration of military expediency forbade it. May we now not appeal to you to reverse the finding of the court on this point, and place Gen. Porter's conduct and actions in the light to which they are entitled by reason of the facts as they really existed?

CONCLUSION.

Now, it does appear to me, if you will take Gen. Porter's conduct from the beginning of this campaign down to the time at which this investigation closes, that throughout he manifests in conduct the utmost anxiety in the performance of his duty; that he seems to have been watchful, to have been energetic, to have exerted himself all the time. While Gen. McDowell seems to have felt that it was not even necessary that he should send any information to Gen. Pope of his own separation from Porter, nor of the fact that he had learned through Gen. Buford of the seventeen regiments passing through Gainesville early in the morning, Gen. Porter was sending dispatches and giving information continuously. If you will recollect, Gen. McDowell did not send Gen. Pope the information communicated by Buford's dispatch. Gen. Pope says that he did not know that fact until seven o'clock on the evening of the 29th. So, while Gen. McDowell did not think it necessary to communicate so important a fact as that, which Gen. Pope says he was expecting to take place on the afternoon of the 29th, Gen. Porter was diligent, watchful, earnest, communicative, and faithful in the discharge of his duties throughout.

There are many other points which this case presents to which I do not propose to allude. I shall leave them, very sure that my colleague will take up anything that is left untouched by myself or by Mr. Maltby; and I am very sure that now this Board fully understands and comprehends this case.

We have endeavored to show you by the testimony which we have introduced, and by a proper analysis and examination of the testimony taken by the court-martial, that Gen. Porter was not guilty of disobedience of the order to march at 1 A. M. on the 28th of August; that the character of the night and the obstructions in the road justified his not doing so.

We have endeavored to show you that he did not disobey the joint order of the 29th to McDowell and himself; that he did not retreat as charged; that there was not a battle, in the sense implied in the specifications, upon the 29th.

Let me here say to the Recorder that I do not wish to contend that there was not a battle, or that there was not heavy fighting or hard fighting, and that some of the fighting there was probably as hard as was ever known—I do not doubt that for a moment. All that we mean to say is that there was not a general battle, a continuous battle, a battle from morning until night.

That we have shown, we think, Gen. Porter did not violate any duty by failing to come upon the battle-field, as charged against him.

That he was not guilty of any military crime in not having attacked, as charged.

That the 4.30 order of the 29th was received by him at too late an hour to have been carried into effect.

That by its terms it involved an attack upon Jackson's right and rear, and this could not have been done by him.

That throughout the 29th of August, 1862, his conduct was that of a faithful and zealous commander, discharging his duty discreetly and wisely, and so as best to serve the interests of his Government, and aid the army of which his troops were a part.

Now the question may be asked, how it came about that a man who was so zealous in the performance of his duty, and, as we allege, was so faithful in its performance, could have been convicted by this court-martial of these offenses. I was asked that question last summer by an old lady, for whom I have great respect, sitting upon the piazza of the hotel. I felt a little perplexed to know how to answer it. She asked a question further which relieved me of my difficulty; how it happened, if they thought he was guilty of this offense, that they did not find that he should be shot. Well, I said to her, that that reminded me of what I had once heard in reference to an Arkansas jury who tried a murder case; the evidence was submitted, and the judge charged the jury, who then went out to consult. They finally came to the conclusion, and so found, that the prisoner was guilty of murder in the first degree, but with a slight suspicion that he was not the man, and therefore they did not think he ought to be hung.

I rather think that is true in reference to this petitioner; I rather think the court-martial found Gen. Porter guilty of these high military crimes just with a slight suspicion that he was not the man. I think that is the reason they did not sentence him to be shot.

The truth is, they made several material mistakes:—

As to Porter's location.

As to retreat.

As to presence of Longstreet.

As to battle.

As to time of delivery of 4.30 order.

Now the time has come, as we think, for rectifying these mistakes. We think that, after this long period of sixteen years, this investigation can be conducted free from any bias or prejudice; that the circumstances under which the trial took place and the influences that were then operating, the influences that then made the minds of men inflamed, made them ready to receive extravagant statements, made them susceptible to influences, to prejudice, to bias; influences from which no man can be free under certain circumstances, have passed away. We know that when there is any great national disaster in any part of the world, when there is a series of defeats to an army or navy, there must always be some one upon whom the popular feeling can turn, and upon whom the consequences of that disaster can be visited. And when the feelings of the people are aroused, when one of those popular commotions sets in, it ramifies, and extends and seizes upon all classes; then it is that it is almost impossible for the judgment of any man, I care not how calm and deliberate he is, I care not what his experience or integrity may be,—it is almost impossible for the human mind, frail as it is, to resist those influences, and look at a question which involves such issues, frankly, candidly, unbiased, and unprejudiced.

Now this record, as it seems to me, from the beginning to the end—and I speak with all due respect for the court-martial and its Judge Advocate—it seems to me, that this record, from the beginning to the end, shows the influences of which I have been speaking—because while the results were produced in the main by these stories of Gens. McDowell and Pope, yet those stories had a degree of inconsistency and contradiction about them which I think if they had been analyzed as they can be now, it would have been seen how unreliable and contradictory they were. But it was a time when the minds of men did not weigh with the coolness and deliberation that can be employed at a period sixteen years after the occurrence of the events.

The examination of the witnesses and the opinion of the Judge Advocate evince the deep gloom and distrust that had seized upon the minds of those who were conducting the trial. Some phantom, not an exhibit in the record, seems to have been constantly rising before them to disturb their reasoning faculties and unsettle their judgments. The simplest truths were ignored. The grossest exaggerations and misstatements were believed. The Judge Advocate, when called upon for an opinion, uttered a lamentation and pronounced a philippic.

No ray of clear sunlight could penetrate the murky and dismal atmosphere in which prejudice, distortion, and exaggeration had enveloped the case.

Sound reasoning and even-handed justice were almost moral impossibilities under such circumstances. Men are mortal. They are swayed by passion, by the excitement of the hour, by the moral forces that press for the time being upon themselves as a part of a nation. It is too much to expect of judges or people that they should be lifted up into that serene atmosphere where these earthly influences can not reach or affect them, when their country is passing through the trials of such a war.

And then the man who, from his position, or from accident or through malice, incurs popular hatred, and becomes the suspected author of misfortune and disaster, is hunted down with such eager thirst and such blind rage that even the strong arm of sovereign power can not always protect him from the avenging spirit that seeks his destruction.

But, when the producing causes of these disturbing elements have passed away, the facts can be examined into calmly, carefully, and justly. Then the errors and injustice of the past can be retrieved. The man who has been the unfortunate victim can be restored to his good name and his rights.

You are called upon to review the proceedings of the court-martial in the aspect I have thus presented to you. If you should reverse their action it involves no necessary reflection upon the court or its members. You are but reviewing the action of a court, to ascertain whether their judgment was correct or not, in view of all the light you have upon these transactions.

Nor is this at all an unusual thing; for there is not an appellate court in the land which is not constantly reviewing the proceedings that have taken place in some court below, where judges who are supposed to be entirely free from partiality and from prejudice, have yielded to influences of one kind or another, and where the appellate courts have been compelled to set aside their judgments, either because they have been unable from prejudice or partiality or bias to render a correct judgment, or

because they have made a mistake, without impairing, in the slightest degree, confidence in the integrity and honor of the judge and court below. And I want it distinctly understood that I do not mean by one word which I have said to impute to the court-martial, or to the Judge Advocate-General who conducted this case, any want of honor or integrity, or to cast any imputation upon their motives or conduct in the course of the trial.

Before closing, I wish to say a word as to the course pursued by the Recorder (Major Gardner) in conducting this examination. I think that Gen. Porter and his counsel are under obligations to him for facilities afforded by him in obtaining testimony. While I do not mean to say he has in any respect transcended his duty in this regard, yet he has so performed that duty as to aid us most materially in placing before you the facts.

Further than that, while there has been at times more or less friction in the conduct of the investigation, I wish to say for myself, that I have no complaints to make of the course he has pursued. He has done what he no doubt conceived to be his duty, and he has done it with the most earnest zeal. I wish to say to you and to him that whatever differences have arisen in the conduct of this case, I accord to him a sincere desire to do his duty according to his judgment.

I think proper also to say that every reasonable facility has been afforded by the War Department to Gen. Porter in obtaining papers and information. Its officers have furnished them readily, and their cheerful compliance with his requests, together with the assistance rendered by the Recorder, to which I have referred, has enabled Gen. Porter to place before you his case far more clearly and fully than he or his counsel ever anticipated would be possible. But to return to the errors made by this court-martial.

My whole effort has been to show that they have been misled, and have fallen into these errors chiefly by reason of the testimony which was adduced before them ; that those errors are now manifest and clear ; that that record cannot be read without finding them ; and if you believe that, then it is your duty so to find, and so inform the President of the United States. If you come to that conclusion—if you come to the conclusion that they did make these mistakes—if you come to the conclusion that they did so, either by reason of the testimony as it existed before them, or by reason of the testimony which has been brought before you, in either event we feel that it is your duty, under the circumstances, so to declare by your finding, and to vindicate Gen. Porter from the charges which were made against him, which destroyed his name and his reputation at the time the trial took place. So far as any further recommendation may be concerned, I have no suggestion to make. The only effort I have made is to have the facts so presented as to induce you by your finding to restore Gen. Porter's name to that page of history which, thus far, since 1862 has been a blank ; to restore it there with the purity and integrity and the honor for which he exerted himself as a soldier, and which he has always endeavored to maintain as a man.

The Board then, at six o'clock P. M., adjourned until to-morrow morning at ten o'clock.





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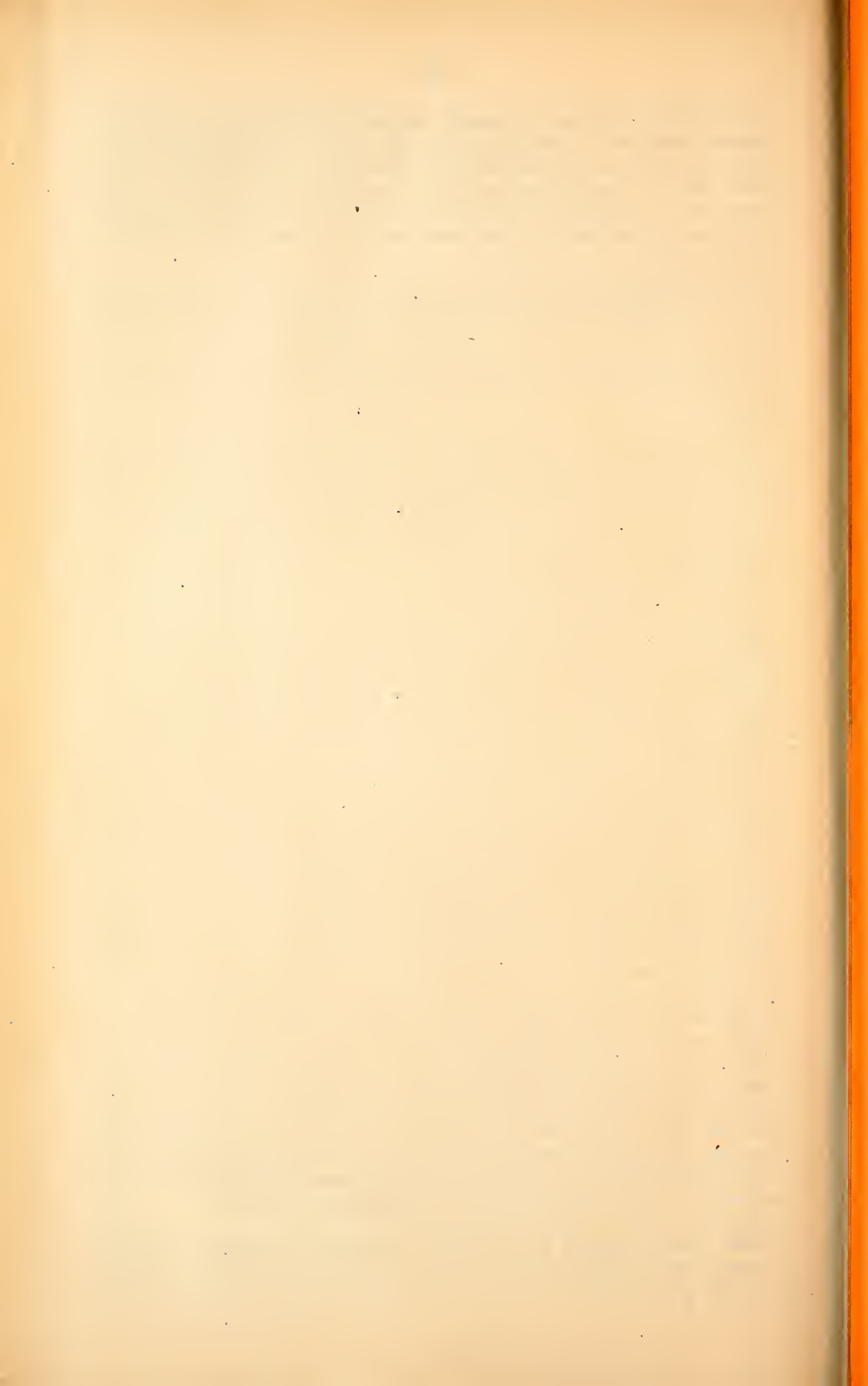
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GENERAL GRANT'S

UNPUBLISHED CORRESPONDENCE

IN THE CASE OF

GEN. FITZ-JOHN PORTER.

PRINTED BY
MARTIN B. BROWN,
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NEW YORK.

PREFATORY NOTE.

General Grant, from 1866 to 1876, was successively General-in-Chief, Secretary of War, and President. While holding these positions applications were made to the President by Fitz-John Porter for a rehearing of his case, upon new testimony not attainable during the trial before the court-martial, and which could only be obtained after the war was ended. All of these applications were presented to General Grant.

Porter's first appeal was indorsed by ex-Presidents, a judge of the Supreme Court, who had been present at the trial, and by other able jurists. It was also strongly recommended by Senators, Representatives in Congress, Governors, Generals, and other officers in the army, and was sustained by undoubted evidence of officers who had been high in command in the Confederate Army and present at the time of the occurrence of the events which were involved in Porter's trial. The President favored the appeal, and Acting Secretary of War General Grant, (then general) without whose approval Porter would not have asked for a reopening of the case, so far coincided as to say to Porter that he should return to his home, where, in four days, he would receive the order for a Board, "*to meet at West Point, where all improper influences would have to go and would be discovered.*"

So convinced of the justice of Porter's claim was General Grant—this soldier then highest in command in the army, and since twice honored with the highest trust in the Nation's gift—that he said of Porter: "Not only ought he to have the rehearing, but every member of the court which sentenced him should be glad to have the opportunity to join in the appeal;" and also, if "injustice has been done by the finding of the court, resulting in a severe sentence, damaging him professionally and otherwise, every opportunity which the law allows should be given to exculpate himself."

However, Grant had faith in the integrity of his former schoolmate, the prosecutor and principal witness against Porter, and believed that a court-martial, composed of officers of high rank, some of whom were of known ability and honor, could not have been deceived. He yielded to the importunate expostulations of the prosecutor and to the statements of officials on whom he felt he could rely, and withheld the order.

While Grant was President the correspondence ceased between him and Porter, except the presentation of appeals by Porter, which were

unheeded. The correspondence which was renewed between them in September, 1881, is here presented, except such as has already been published, so far as it relates to Porter's case, from the first appeal in 1866 to the date of Grant's fatal illness. It exhibits those traits in General Grant's character which will commend him at all times to the admiration of his countrymen—his confiding trust in those from whom he had the right to expect honest information and advice, and his firmness in conscientious performance of duty to the Government. He supposed Porter justly condemned, and, acting upon this supposition, which he based upon the information derived from the statement and advice of others, he refused to make an order, which, in his desire to render justice to an old comrade, he had promised should be made.

But the correspondence exhibits him in a still better and grander aspect. When he had time to examine for himself the merits of the case, he rose superior to all selfish motives, quickly saw the errors into which he had fallen, and with all the noble instincts of his nature continuously labored to correct his former mistake and to remove a burden which he now saw had been so unjustly placed on an innocent man.

Grant felt keenly the injustice he had so unwittingly done to Porter, and he strove to the utmost of his ability to undo the wrong. He took no undecided step in this direction; no half-way measures would answer his purpose, so he threw himself with all the energy of his determined nature into the case, and made no uncertain sound.

Under these circumstances these letters are worthy of the highest credence. The writer, the earnestness of his purpose, the integrity of his intention, the facts which impelled him to write as he did, stamp his utterances with the divine impress of truth. One who could thus act and thus write must be believed.

THE CORRESPONDENCE.

NEW YORK, September 8, 1866.

General ULYSSES S. GRANT, *Washington City* :

GENERAL—Flattering myself that the result of my trial by court-martial, in 1863, was not passed unnoticed by you, and believing that you would take pleasure in being instrumental in discovering any erroneous finding and in remedying any wrong resulting from it, I take the liberty of asking the favor to aid by a letter to the President of the United States, or in whatever manner you may deem best, in effecting, by his authority, a re-examination of the proceedings of my court-martial, and if agreeable to you, making known your action to the Hon. Reverdy Johnson, for use at such time as he may deem most proper.

Though conscious of innocence of any criminality, such as alleged against me, and of all intentional wrong-doing, and knowing of erroneous finding, I cannot expect or ask others to be convinced without an examination of the evidence or a presentation by unprejudiced authority ; but having to a certain date an unblemished record of no ordinary services, well and faithfully performed, to my country, it might be presumed that, ever careful of my honor, I could not have been reckless of my fame, upon which hang all the hopes of wife, children, and relatives, and connected as it may be with the history and destiny of my country, and I trust such a record and inference may have weight in causing a reconsideration of the proceedings of my court-martial with a view of ascertaining any wrong resulting from erroneous finding, and remedying it if any be found.

In the hope my appeal may meet with a favorable response,

I am, General, with high respect,

Your obt. ser.,

F. J. PORTER.

HEADQUARTERS ARMIES OF THE UNITED STATES, }
WASHINGTON, D. C., October 1, 1866. }

FITZ-JOHN PORTER, *Esq.*, *late U. S. Army* :

SIR—General Grant directs me to acknowledge the receipt of your letter of September 22d, and also that of September 24th, with its inclosure, all relating to your restoration to the army. He instructs me to say that in all cases where application has been made for his interference, based on the supposition that some previous action of the Government has been incorrect, and such previous action occurred prior to his taking command of the

army, he has considered it his duty to decline the interference. In your case the reasons are still stronger, as no change has occurred in the office of Secretary of War since the action of which you complain, and the Secretary is the authority that General Grant would assume to judge, if he should attempt a compliance with your request.

He therefore considers himself bound to abide by the rule already laid down to interfere with the action of no administration, occurring prior to his command of the army.

I am, sir, very respectfully your obedient servant,

ADAM BADEAU,
Col. and A. D. C.

HEADQUARTERS ARMIES OF THE U. S., }
September 10, 1867. }

GENERAL—Your note of this evening, together with one from Admiral Porter, asking to see me relative to some business of interest to yourself, is received. I would be pleased to see you at my house this evening, but I am just starting out and I will not return until late. I will see you, however, at the War Office at any hour you please to call after 10 A. M. to-morrow.

Yours, etc.,

U. S. GRANT.

Gen. FITZ-JOHN PORTER,
Willard's Hotel, Washington, D. C.

The application referred to below was Porter's appeal of 1867 to President Johnson, sustained by the appealing letters and indorsements of Ex-Presidents Fillmore and Pierce, Judge Curtis, Senators Wilson, Foster, Sherman, Harris, Governor Curtin, Governor Winthrop, Horace Greeley, General Banks, Edward Everett, and others.

WAR DEPARTMENT, September 13, 1867.

Before any consideration should be given to the within application of Fitz-John Porter for the reconsideration of the proceedings and sentence of a court-martial which convicted him of high crimes against the United States, it is manifestly proper that he should "demonstrate to the satisfaction of the authorities his ability to controvert by new evidence the testimony on which he was convicted." If injustice has been done him by the findings of the court, resulting in a severe sentence, damaging to him professionally and otherwise, every opportunity which the law allows should be given to Mr. Porter to exculpate himself. But no such testimony is presented with these papers, and until it shall be, and of a satisfactory character, no action in the case is recommended.

(Sgd)

U. S. GRANT,
Secretary of War ad interim.

WASHINGTON CITY, September 18, 1867.

To Gen'l U. S. GRANT, Secretary of War :

GENERAL—In my interview this morning I understood that before acting on my appeal you desired the opinion of the Attorney-General upon certain points relating to the powers of the President of the United States to grant a re-examination.

I infer from this that if no such power existed, a recommendation on your part would be useless.

While I have no reason to believe that the points in question have ever been presented to the consideration of the Attorney-General, I have no doubt of a favorable decision, and that the object of my appeal can be accomplished without in any manner compromising the rights of any one, or of the Government.

That no misunderstanding may exist, I repeat that my aim is to vindicate my honor, and to relieve myself of the burdens of a severe sentence. This I am confident I can accomplish in the most satisfactory manner to the Government and myself before a court-martial, court of inquiry, board, or whatever it may be termed, composed, as far as available, of the best talent of the army, which, under rules governing courts-martial shall decide on the merits of the case, by duly considering all the old and new testimony combined, giving to witnesses whom it may be desirable to call an opportunity to amend or reaffirm their recorded evidence, and accepting all other evidence as it stands, the action of the court to be advisory, so far as I am concerned.

If any such action as is indicated by your questions should be deemed necessary in order to secure the investigation I desire now, as I did verbally to-day, to disclaim all idea, present and future, of availing myself of any rights which might thus be acquired, other than would be essential to conduct the investigation.

Cases like mine, on presentation of a just claim, or reasonable grounds to suppose it just, have been reopened and decided upon by the War Department.

I could not ask you to devote your time to an examination of the case, nor could I presume, in calling for satisfactory evidence to substantiate my claim, that you desired to prejudge it, yet, as I said to-day, if you would be the arbiter, I would be glad of the opportunity to present the whole matter.

In order that my wishes may be fully before the President, I respectfully request that this letter may be forwarded to be placed with the other papers.

I am, General,

With high respect,

Your obedient servant,

FITZ-JOHN PORTER.

WAR DEPARTMENT, September 19, 1867.

There is no case like this on record in the War Department.

The application calls for a decision which, whatever its nature, will be very important in its effects on the public service. It is therefore recommended that the application be referred to the Attorney-General for his opinions on the following points:

Is there authority to try a second time by a military court a person whose case has been regularly and finally disposed of according to law, and after he has been dismissed and been out of the military service for a number of years?

If so, what preliminary proceedings are necessary to make such a court legal?

Especially in what mode should the person applying for a second trial be required to demonstrate that he possesses new and additional evidence of a kind which will enable him to prove his innocence of the charges on which he was dismissed?

Should not the witnesses on whom he professes to rely be required to make oath that they will, on the trial asked for, give the evidence they now state they can give?

In view of his familiarity with the laws and usages which govern the administration of military justice, it is suggested that the views of the Judge Advocate-General of the Army on the foregoing points be submitted to the Attorney-General.

Respectfully,

U. S. GRANT.

These documents and the evidence in support of Porter's appeal were submitted to the Attorney-General, from whose files they soon disappeared, together with all traces of their having been in his hands, except the recording words, "Porter's appeal." They were never found. Copies of these documents are now on file in the War Department.

EXECUTIVE MANSION,
WASHINGTON, D. C., February 27, 1869. }

Gen. FITZ-JOHN PORTER, *Washington, D. C.:*

SIR—In reply to your request to have properly filed, for early reference, your application and accompanying papers for a re-examination of your case, I am instructed to inform you that all the papers were received in September, 1867, and referred to the Attorney-General, between whose office and this they seem to have become mislaid. Search will be made for them, and when found, they will be properly referred, or returned to you if desired.

Very respectfully,

Your obedient servant,

WM. G. MOORE,

Secretary.

The appeal, with increased evidence, was renewed in June, 1869, and again in 1874. But no action was taken upon either of them by Gen. Grant, nor was he appealed to prior to September, 1881, after the decision of the Schofield-Terry-Getty Board.

NEW YORK, September 17, 1881.

Gen. U. S. GRANT, Long Branch, N. J.:

DEAR GENERAL—I have been told that you have entertained and sometimes expressed opinions reflecting upon the integrity of my military acts while in the army. While I have always been unwilling to believe these reports, I cannot help taking them to heart, as I am willing to acknowledge that it would be a matter of wonder if you did not entertain opinions adverse to me, considering the light under which you may have expressed them.

Desirous always of having the good opinion of an eminent soldier, but only through his honest convictions of my worthiness of it, I would be very glad and highly gratified, if, at a time and place convenient to you, you would favor me with an interview and an opportunity of presenting facts to meet any objection you may have to my acts, hoping as I do to remove all such unfavorable impressions, and believing that, if I can do so, it would be none the less gratifying to you.

Believe me, very respectfully yours,

F. J. PORTER.

NEW YORK, September 27, '81.

Gen. F. J. PORTER, 119 Liberty Street, N. Y.:

DEAR GENERAL—Your letter of the 17th of September was handed to me at Long Branch the day after the death of the President. Since that time I have had no opportunity of seeing you, and hence have deferred writing until this time. For a few days I will be so busily employed that I am not able now to appoint a time for the conference which you desire to have with me, but as soon as I can fix a day I will take great pleasure in doing so, and will hear what you have to say in regard to the matter alluded to in your letter, and will endeavor to listen without prejudice, and if convinced that I was wrong in former opinions entertained, and possibly expressed, I would be willing to correct them.

Very truly yours,

U. S. GRANT.

NEW YORK, October 31, 1881.

Gen. F. J. PORTER, Office N. Jersey Central R. R.:

DEAR GENERAL—Since my letter to you I have been so busy with correspondence and callers each day that I have not been able to designate

a particular time to see you. If you will call any day, however, at my office, 90 Broadway, about 11 o'clock, I will give you the interview desired, and will keep persons from coming in my office during the time you are with me.

Very truly yours,

U. S. GRANT.

NOVEMBER 19, 1881.

DEAR GEN.—I am in receipt of yours of this date, with copy of Gen. Terry's letter. I have read the letter. It is manly, to say the least, and I exonerate you so far as the judgment of one—and a very intelligent—member of the court goes. I will destroy the copy of Gen. Terry's letter which you sent me.

Very truly yours,

U. S. GRANT.

Gen. F. J. PORTER.

Congress was about to meet. Porter was anxious to have General Grant's decision at an early day, as upon it depended whether his renewed appeal should be made through the President or direct to Congress. He therefore sent the following note :

NEW YORK, December 1, 1881.

Gen. U. S. GRANT :

GENERAL—I would be glad of an interview with you to-day, if agreeable, or to-morrow, if more convenient to you.

Yours truly,

F. J. PORTER.

This note was returned, indorsed as follows

I will be glad to see you at any time you may call, but your papers I carried to my house to go over carefully, but as to yet I have had company every evening at the house—the only time I am there—so I have not yet examined them sufficiently to say anything. I think I can safely say, however, that you will not meet with opposition from me in obtaining relief from the odium of your sentence. After examining the papers before me—which I will do within a few days, if I have to shut myself up for the purpose—if my judgment convinces me that you have been wronged, I will say so.

U. S. GRANT.

The interview did not take place; Porter preferring to wait till the General had formed his convictions.

DECEMBER 9, 1881.

Gen. F. J. PORTER :

DEAR GEN.—I have been able to give some days to the reading of the papers which you submitted to me, but have not finished them. If you will call, say next Monday, about eleven o'clock, I will be pleased to see you. I can say now, however, from what I have read, I believe I have heretofore done you an injustice, both in thought and speech, and if of the same opinion when through the examination of your case, I will regard it a most solemn obligation on my part to correct the wrong so far as I have any responsibility for it.

Very truly yours,

U. S. GRANT.

NEW YORK CITY, Dec. 19, 1881.

General F. J. PORTER :

DEAR GENERAL—I am through reading the papers you submitted to me, and will be ready to meet you any morning at about 11 A. M. after to-morrow. I have seen nothing to change the views I expressed to you in our last conversation.

Very truly yours,

U. S. GRANT.

NEW YORK, Dec. 23, 1881.

Gen. F. J. PORTER, New York :

DEAR SIR—I send you by the bearer the letter to the President, which I hope is satisfactory, and which I expect to follow up by such course as circumstances hereafter may dictate as necessary and proper. I sincerely hope that the day is not distant when you will receive the justice which I feel sure is due to you.

I will be pleased if you will send me a copy of the proceedings of the Board, as published by the Senate.

Truly yours,

U. S. GRANT.

NEW YORK, Dec. 22, 1881.

The President, Washington, D. C. :

DEAR SIR—At the request of Gen. Fitz-John Porter I have recently reviewed his trial and the testimony furnished before the Schofield Court of Inquiry, held in 1879, giving to the subject three full days of careful reading and consideration, and much thought in the intervening time. The reading of the whole of this record has thoroughly convinced me that for these nineteen years I have been doing a gallant and efficient soldier a very great injustice in thought, and sometimes in speech. I feel it incum-

bent upon me now to do whatever lies in my power to remove from him and from his family the stain upon his good name. I feel this the more incumbent upon me than I should if I had been a corps commander only, or occupying any other command in the Army than the one which I did; but as General I had it possibly in my power to have obtained for him the hearing which he only got at a later day, and as President I certainly had the power to have ordered that hearing. In justification for my injustice to Gen. Porter, I can only state that shortly after the war closed, his defense was brought to my attention, but I read it in connection with a sketch of the field where his offenses were said to have been committed, which I now see, since perfect maps have been made by the Engineers' Department of the whole field, were totally incorrect as showing the position of the two armies. I also read it in connection with statements made on the other side, against Gen. Porter, and I am afraid possibly with some little prejudice in the case—although Gen. Porter was a man whom I personally knew and liked before; but I got the impression, with many others, that there was a half-hearted support of Gen. Pope in his campaigns, and that Gen. Porter, while possibly not more guilty than others, happened to be placed in a position where he could be made responsible for his indifference, and that the punishment was not a severe one for such an offense. I am now convinced that he rendered faithful, efficient and intelligent service, and the fact that he was retained in command of a corps for months after his offenses were said to have been committed, is in his favor.

What I would ask in Gen. Porter's behalf from you is, that if you can possibly give the time, that you give the subject the same study and thought that I have given it, and act then as your judgment may dictate. But, feeling that you will not have the time for such an investigation (for it will take several days' time), I would ask that the whole matter be laid before the Attorney-General for his examination and opinion.

Hoping that you will be able to do this much for an officer who has suffered, for nineteen years, a punishment that never should be inflicted upon any but the most guilty,

I am, very truly yours,

U. S. GRANT.

DECEMBER 27, 1881.

Gen. F. J. PORTER :

DEAR GENERAL—I hardly know how to advise in regard to the best time to present your petition to the President. I presume the Senator (Sewell) could see the President at the hour named, one o'clock. But the chances are he would have no opportunity to converse with him privately. I am very desirous of talking to him myself about your matter, and my

conclusions regarding the wrong you have been suffering, and called yesterday on him; but others were in the room all the time I was there. I shall endeavor to get an opportunity to tell him about my letter to him on your matter before he returns.

You can judge as well as I can whether it is better to have Senator Sewell call here or not.

Very truly yours,

U. S. GRANT.

General PORTER :

Please read inclosed letter and then have it dropped in the mail.

U. S. G.

NEW YORK CITY, December 30, 1881.

MY DEAR GENERAL—I have your letter of yesterday. It is true that I have re-examined the proceedings of the court-martial and court of inquiry of Fitz-John Porter's case, and believe sincerely that I have done him an injustice, and have so written to the President. When I gave General Porter the letter I requested him to send you a copy. If he has not done so he will, or I will. That letter will explain all that I would otherwise write you on this subject. I reluctantly came to the conclusions I did, but was convinced beyond all preconceived notions, and felt it due to an accused man to say so.

Very truly yours,

U. S. GRANT.

Gen. J. A. LOGAN,
U. S. Senate.

NEW YORK CITY, January 23, 1882.

The President :

I take pleasure in presenting Governor Randolph, of New Jersey, who visits Washington, no doubt, principally in reference to rendering a service to General F. J. Porter. He desires to meet you personally, and I give him this letter cheerfully, requesting that he may have that pleasure. Of course, I know a letter from me is not necessary to secure this favor, because, as Governor of a neighboring State, and as representative of his State in the United States Senate, you know him in a public capacity. But, as I feel myself somewhat responsible for General Porter's long suffering, I ask an interview with one of his personal friends to the end that you may consult as to the best method of reaching a just and practical solution of the Porter case, if you should look upon the matter as I do.

Very truly yours,

U. S. GRANT

NEW YORK CITY, February 4, 1882.

Gen. F. J. PORTER :

DEAR GENERAL—I send you my letter to Senator Cameron. Please read it and mail, unless you have suggestions to make of alterations or additions. My whole object now is to benefit you, and to this end I am willing to do anything that is truthful.

Very truly yours,

U. S. GRANT.

NEW YORK, February 4, 1882.

Hon. J. D. CAMERON, *U. S. Senate, Washington, D. C. :*

DEAR SIR—It has been my intention, until within the last few days, to visit Washington this winter, to spend some time, and, there, to have a conversation with you and with Gen. Logan on the subject of the Fitz-John Porter case; but, having now pretty nearly decided not to go to Washington, I have determined to write, and write to you, so that you may state my position to your friends, and particularly to General Logan, and, if you choose, show this letter to any such people.

When I commenced the examination of the Fitz-John Porter case, as it now stands, it was with the conviction that his sentence was a just one, and that his punishment had been light for so hideous an offense; but I tried to throw off all prejudice in the case and to examine it on its merits. I came out of that examination with the firm conviction that an entirely innocent man had been most unjustly punished. I cast no censure upon the court which tried him, because the evidence which now proves his entire innocence of disobedience of orders it was impossible to have before that court.

When I completed the investigation, and came to the conclusion that I did—of his innocence—my first thought was to write to General Logan, because I regard him as my friend, and I am sure I am his, and he had made probably the ablest speech of his life in opposition to the bill for Gen. Porter's restoration to the army. I thought, therefore, that it was due to him that I should inform him of the conclusion that I had come to after the investigation. But, as the President was just about visiting this city when my letter to him was written, and it was desired to present it to him here, I requested Gen. Porter, in lieu of a letter to Gen. Logan, to have a copy of my letter to the President sent to him. This was done.

You are aware that when Gen. Logan made a speech against Gen. Porter, it was in opposition to a bill pending in Congress. He, like myself, was thoroughly convinced of the guilt of Gen. Porter, and was, therefore, opposed to the bill. His investigations, therefore, were necessarily to find arguments to sustain his side of a pending question. I have, of course, no knowledge of the papers he could refer to, or would examine, to find such

arguments, but I know he could have the testimony which was taken before the court-martial which convicted, probably also the arguments of the officer who acted as prosecutor when the case was before the Schofield Court, and arguments that have been made by lawyers J. D. Cox, and others possibly—all of which were made in opposition to Gen. Porter, as much as that of paid attorneys in cases of civil courts.

But, my investigation of all the facts that I could bring before me of the occurrences from the 27th of August, 1862, and for some little time prior to the 1st of September the same year, show, conclusively, that the court and some of the witnesses entirely misapprehended the position of the enemy on the 29th of August.

Gen. Porter was convicted of disobedience of an order of Gen. Pope's, dated at half-past four P. M. on the 29th of August, to attack the enemy on his right flank and in his rear if possible. Dispatches of Gen. Pope, of that day, show that he knew Gen. Lee was coming to the support of Jackson, whom he thought commanded the only force in his front at that time, but that he could not arrive until the evening of the following day, or the morning of the day after. It was sworn to, before the court, that this order of 4.30 P. M., reached Gen. Porter at about five, or half-past five in the afternoon; but it must be recollected that this testimony was given from memory, and unquestionably, without any idea, at the time of the occurrence, that they were ever to be called upon to give any testimony in the case. Investigation shows a dispatch from Gen. Porter, dated 6 P. M. of that afternoon, which makes no mention of having received the order to attack, and it is such a dispatch as could not be written without mentioning the receipt of that order, if it had been received.

There is other testimony that makes it entirely satisfactory to my mind that the order was not received until about sundown; or between sundown and dark. It was given, as stated before, to attack the enemy's right, and if possible get into his rear. This was on the supposition that Jackson was then alone, as Pope had stated he would be until the evening of the next day, or the morning of the day following. I believe the court was convinced that, on the evening of the 29th of August, Jackson with his force was then alone; but now, it is proven, by testimony better than sworn evidence of any person on the Union side, that by eleven o'clock A. M. of the 29th, Longstreet was up and to the right of Jackson, with a force much greater than Gen. Porter's entire force. The attack upon Jackson's right and rear was, therefore, impossible without first wiping out the force of Longstreet. The order did not contemplate a night attack, and to have obeyed it, even if Longstreet had not been there, Gen. Porter would have been obliged to make a night attack. But, even as it was, I find that Gen. Porter, notwithstanding the late hour, did all he could to obey that order. He had previously given a command to Gen. Morrell, who commanded his most advanced division, or one most fronting the enemy, to throw out a strong skirmish line to engage the enemy or to keep him occupied, and,

on receipt of the order, although at this late hour, he immediately sent orders to Gen. Morrell to increase it from a skirmish line to a large force, and that he would be with him as soon as he could get there. He did actually go to the front, although it was dark, to superintend this movement, and as far as possible to prevent the enemy detaching anything from his front, thus showing a desire to obey the order strictly and to the best of his ability.

I find the Schofield Board acquit him entirely, but throw some censure upon him for having expressed a lack of confidence in his commanding officer. Such conduct might be censured, although if every man in the army had been punished, who had expressed lack of confidence in his superior officer, many of our best soldiers would have been punished. But, in fact, if this was not stated in the summing up of the case by the Board, I should have not found that he had expressed any such lack of confidence. On the contrary, to my mind now, he was zealous in giving a support to General Pope, and more so, possibly, for the reason that he knew among his former army associates there was a good deal of apprehension, to say the least, of his fitness for his new place. It must be recollected that General Pope was selected from a Western Army, and brought East to command where there were a great many generals who had experience in a previous war, and who had, like himself, a military education, and there may (improperly) have been a feeling that it was a reflection upon them to go out of their own command to find a suitable commander, and it is also very probable that expression was freely given without feeling. But, it would be well to reflect what would have been the sentiment in the West, if an officer from the Eastern Army had been sent out to supersede all of them, and to command them, and whether or not there might not have been some harsh criticisms, even by men who proved to be among our most gallant and devoted commanders. Then, too, in re-examining the case, my attention was called again to General Pope's early order in taking command of the Army of Virginia. I send you a copy of this order. You will see that it was calculated to make the army to whom it was addressed feel that it was a reflection upon their former services and former commanders, from that of a company to the commander of the whole, and that even as amiable people as General Logan and myself are would have been very apt to have made some very uncomplimentary remarks, if they had been addressed by an Eastern officer sent West to command over us in our field of duty.

I commenced reading up this case with the conviction that General Porter had been guilty, as found by the court, but come out of the investigation with a thorough conviction that I and the public generally had done him a fearful injustice, and entirely satisfied that any intelligent man or lawyer, who will throw aside prejudice and examine the case as I have done, will come to the same conclusion.

As stated in my letter to the President, I feel it incumbent upon me in view of the positions that I have held heretofore and my failure then to do what I now wish I had done—to do all in my power to place General Porter right before the public and in future history, and to repair my own unintentional injustice.

I address this letter to you, knowing that you will have a desire to do just what your judgment dictates as being right in the matter, and that you will state to whomsoever it may seem to you proper and necessary my present convictions upon this case.

Very truly yours,

U. S. GRANT.

NEW YORK CITY, April 10, 1882.

The President :

To-morrow being "Cabinet day," and assuming that, in all probability, whatever action you propose to take in the Fitz-John Porter case will then be closed, I venture to address you once more on the subject. As I have before said verbally, and in writing, I take a very deep interest in this matter, because I deem myself somewhat responsible for the continuous punishment of an officer of high rank in the army whose innocence I am now as sure of as it is possible for one to be in human evidence. I do not ask you to change any views you may entertain about the case, but I would ask, if you cannot conscientiously recommend his case favorably to Congress, that you can refer to the report of the Advisory Board, its conclusions, and, if you choose, to what I have said and written since my recent review of the case, and leave Congress to act without the weight of Executive recommendation against it.

Very truly yours,

U. S. GRANT.

NEW YORK CITY, May 29, 1882.

Hon. J. D. CAMERON, U. S. S. :

DEAR SENATOR—I understand the bill for the relief of Gen. F. J. Porter will be called up to-morrow, if there is a session, if not, on the first meeting thereafter. I hope you will do all that is proper to expedite a hearing and vote in his case. My feeling in this matter is intensified by my thorough conviction of Porter's innocence of the charges upon which he was convicted and the fact that I am more or less responsible for the long delay in having justice—partial justice—done him. Logan made an able speech against Porter, believing him guilty, as I did at the time, but I do not believe he will benefit himself by renewing the attack, now that an

investigation, not only by an able and impartial board, acting as judges and not as defenders, unqualifiedly pronounce him innocent, but writers of history, free from prejudice or prejudiced against him, also so find.

If you can urge a vote this week, I will regard it as a special favor. The bill is a very mild one in comparison to what I think is due Porter; but perhaps it is better that it should be so.

Very truly yours,
U. S. GRANT.

NEW YORK CITY, October 23, 1882.

DEAR GENERAL—A note from Gen. McClellan, received since you were here this A. M., states that the editor of the *North American* can publish what I have to say about your case, if received by the 25th of this month—day after to-morrow. I did not take the papers with me yesterday, and to-day I have not had one minute to look at them. It is, therefore, very doubtful about my being able to submit the matter at so early a date.

Very truly yours,
U. S. GRANT.

Gen. F. J. PORTER.

NEW YORK CITY, Oct. 25, 1882.

DEAR GENERAL—With this I send you the matter prepared by me yesterday, touching upon the finding of the Court-martial of 1862, when charges were against you. You are at liberty to do with it as you think best. I will suggest, however, that it does not appear to me worthy of a place in a magazine of the standing of the *North American Review*.

As you know, it was dictated from notes prepared hastily, and they were departed from largely. The subject has become so familiar to me recently that I think I have committed no error in the statement of facts. I am sorry that I did not have more time to prepare the article, but I have had my time so taken up with callers at my office since I consented to write this, that I rarely got an opportunity to look at the papers referring to your case until I took them home with me on Monday afternoon, and spent the evening over them. This must be my excuse for so limited amount of detail and other imperfections.

Very truly yours,
U. S. GRANT.

Gen. F. J. PORTER.

NEW YORK CITY, December 27, 1882.

DEAR GENERAL—I have just opened your letter of the 25th instant. Bragg is right in saying that your bill and mine should not go together. If any friend—or enemy—should be guilty of the bad taste of so associating the two bills I should certainly write or telegraph some friend to withdraw mine entirely. I care nothing about mine whatever. It will depend much upon the discussion that takes place in Congress whether I accept even if it does pass. In yours I feel a much deeper interest, and am ready to say now, that if yours can be advanced by laying mine “on the table” or withdrawing it, I am ready to ask it.

Very truly yours,
U. S. GRANT.

Gen. F. J. PORTER.

NEW YORK CITY, February 21, 1883.

DEAR GENERAL—I have your letter of this A. M. I beg you to give yourself no concern about the bill for my retirement. I care nothing about it; in fact, should be governed in my acceptance or declination of its benefits—if it were to pass and receive the signature of the President—by the discussion in Congress and comments by the public. Of course, I should esteem it a great compliment if Congress, with great unanimity, should pass this bill, should pass the bill before the House, and it should be received with favor by the public. Otherwise I would not accept. But even if I were anxious for the passage of the bill retiring me, I would not have it at the expense of one so deeply wronged as I now know you have been.

Yours truly,
U. S. GRANT.

Gen. F. J. PORTER.

DEAR SIR—I have hastily to-day drafted the inclosed, and without any papers before me to correct any statement that may lack a little in accuracy, I wish you would read it over, and if you see anything requiring change suggest it to me the first time you come to the City. If the letter is all right you can retain it as it is.

Yours truly,
U. S. GRANT.

Gen. F. J. PORTER.

NEW YORK, November 23, 1883.

Gen. F. J. PORTER, *Morristown* :

DEAR GENERAL—As there is some discussion now as to the probable reasons for my change of mind in regard to your case, now pending before

the people of the United States, I deem it proper that I should give them myself.

In the first place, I never believed you to be a traitor, as many affected to believe. I thought I knew you too well to believe for one moment that you would accept the pay, rank and command you held for the purpose of betraying the cause you were professing to serve. Then, too, your services had been too conspicuous as a staff officer at the beginning of the war and as commander of troops later, to support such a theory for a moment.

But I did believe that General Pope was so odious to some of the officers in the East that a cordial support was not given him by them. I was disposed, too, to accept the verdict of a court-martial composed as the one which tried you was. Some of the members of that court I knew personally, and had great confidence in their judgment and justice, I supposed you had shared in this feeling towards Pope, and while not more guilty than others, you were unfortunate in being placed in a position where specifications could be made showing this hostility.

After the close of the war, when I was requested to read your new defense, I read it with the feeling above described. At the same time I read the other side as prepared—or furnished—by General Pope. This gave maps showing the positions of the two armies substantially as shown by the first of the diagrams presented by Mr. Lord, of San Francisco, from whom I copied the article in your case, and did not indicate the presence of any other force than Jackson's. Then, too, it appeared that you had actually received an order at about 5 or 5.30 in the afternoon of August 29, to attack the enemy's flank, and that, too, at a time when a fierce battle was raging in the front.

I was first shaken in my views, however, when such a man as General Terry—who unites the lawyer with the soldier—a man of high character and ability, and who had believed as I had, and possibly worse, after many weeks of investigation, should entirely vindicate you and be sustained, too, by men of the known ability of his colleagues on the board. Until in 1881, when I re-examined for myself, my belief was that, on the 29th of August, 1862, a great battle was fought between General Pope, commanding the Union forces, and General Jackson, commanding the Confederate forces; that you, with a corps of twelve or more thousand men, stood in a position across the right flank of Jackson, and where you could easily get into his rear; that you received an order to do so about 5 or 5.30 o'clock, which you refused to obey because of clouds of dust in your front, which you contended indicated an enemy in superior force to you; that you allowed Pope to get beaten while you stood idly looking on, without raising an arm to help him. With this understanding, and without a doubt as to the correctness of it, I condemned you.

Now, on a full investigation of the facts, I find that the battle was fought on the 30th of August; that your corps, commanded directly by

you in person, lost a greater percentage than any other corps engaged; that the 4.30 order of the day before did not reach you until night-fall; that your immediate superior had cautioned you early in the day that you were too far out to the front then; that General Pope had cautioned you against bringing on an engagement except under such circumstances as he described, and that in any event you must be prepared to fall back behind Bull Run that night, where it would be necessary for you to be to receive supplies; that from eleven o'clock of the 29th you were confronted by a force of twice your own number, of whose presence you had positive proof, while General Pope did not know of it.

The last fact is shown by the wording of the 4.30 order. It directed you to attack the enemy's right and to get into his rear. General Pope's circular of the morning of the 29th said that General Lee was advancing by way of Thoroughfare Gap. At the rate at which he was moving he would be up the night of the 30th or the morning of the 31st.

In his testimony before the court-martial which tried you he said, under oath, that he did not know of the arrival of Lee's command until six o'clock of the 29th, an hour and a half after he had dictated the order for your attack.

His circular and testimony prove conclusively that Jackson, and Jackson alone, was the enemy he intended you to attack. Your knowledge of this fact, as well as of the fact that you had another force, quite double yours, in addition in your front, would have been sufficient justification for your not attacking, even if the order had been received in time. Of course this would not apply if a battle had been raging between Jackson and Pope. At the hour you received the order all was quiet.

This very short, hastily written and incomplete summary shows why and when my mind underwent a change. I have no doubt now but the change would have taken place in 1867 if I had then made an investigation. I regret now that I did not understand your case then as I do now. Your whole life since your trial, as well as your services before, disprove the great burden of the charges then sustained by a court-martial. As long as I have a voice it shall be raised in your support without any reference to the effect upon me or others. Your restoration to the army, simply, I would regard as a very inadequate and unjust reparation. While men—one at least—have been restored to the army because of their gallantry and wounds, after conviction and sentence, and when there is no doubt of their guilt are given all their pay for the years they were out of the service, I can see no reason for your having less.

I hope for you a thorough vindication, not only by Congress, but in the minds of your countrymen.

Faithfully yours,

U. S. GRANT.

WASHINGTON, D. C., March 27, 1884.

My Dear General PORTER :

Before the receipt of your letter of two or three days ago, I had seen General Slocum, and stated to him before I heard the object of his call, that I had thought of writing to you that I feared that the passage of your bill before the meeting of the Chicago Convention might embarrass the President. Slocum may have written to you. I have delayed writing because about the day before your letter was written I had met the Secretary of State on the street—I in a carriage—and had some conversation with him. He said that he wanted to call in a day or two and have some conversation with me. He has not yet called. When he does I will find out, if I can, the fate your bill would probably meet if left with the President. I had hoped to meet the Secretary before this, and before writing to you. I will inform you or Slocum, or both, if I get anything definite. I sincerely hope there can be no slip in your case this time, and although still on crutches will give it the best attention and efforts I can.

Very truly yours,
U. S. GRANT.

LONG BRANCH, July 4, 1884.

My Dear General PORTER :

You can scarcely conceive the pain it caused me to read the veto of your bill by the President yesterday. I was not prepared for it. His message is the merest sophistry. It is no doubt a great disappointment to you and your family, but I believe it will result ultimately in doing you fuller justice.

You were dismissed unjustly and you are entitled to restoration. That would make you a Major-General from the date of dismissal to the time of restoration. I want to see this final decision in your case.

Be of good cheer, and pray that justice may yet be done you and yours.

Faithfully yours,
U. S. GRANT.

NEW YORK, November 4, 1881.

DEAR GENERAL—If, after you have read the report of the Board and my letter to Gen. Cox, you should need any further light or information or proof to sustain anything put forth by the Board or by me, I shall be very glad to give it. Yesterday, I saw plainly that your impressions of the

facts in the case were incorrect, and I am anxious that you should see the facts in their true light, and the more so as the matter was once in your hands to act upon, but you did not act upon, I presume, because of such impressions as you expressed yesterday.

I will try to present my case to you clearly and dispassionately, believing that you will receive them as dispassionately and free from prejudice and with as great a desire to undo any wrong unintentionally done, as you would have done right in the first case.

My statement sent to you yesterday, was mainly written in 1863, added to, as time sustained my views, by proofs, and but slightly altered by my counsel for presentation to the Schofield Board. The foot notes were added after the adjournment of the Board, and when the Senate was printing the proceedings.

My case will come before Congress at the opening of the session. It will, as long as I live, and till adjusted, be before the Government. I have always believed and felt that it was the duty of the Administration to adjust it under present laws, by one simple Administrative act, and a nomination to the Senate, and to satisfy the Administration of the justice of its act in so doing. I have always sought, as you know, the decision of a Board of Army officers, skilled in war and of undoubted integrity, and, if you will recollect that, when Act. Sec. of War, I offered then to submit the whole matter to you and abide your decision, after consideration of the evidence.

I did hope that the last Administration, after giving me the Board, and receiving the result of their deliberations, would have given to me as they did to Dr. Hammond, their favorable action. The Board's deliberately expressed convictions, that the court-martial had been led by misinformation into errors, and that I was free from all blame, and more than that, and also that it laid no blame upon any one for the wrong under which I, as well as all I hold dear, had suffered many years, I had hoped would have caused the powers that then were to have done what was just, to have at once carried out the recommendations of the Board by one simple act of authority and of law, and a nomination to the Senate, and have thus saved the country the spectacle of a partisan discussion and support of injustice now made manifest.

Pardon these lines if I have gone too far, and consider them the excess of zeal of one whose aim of life is to vindicate his name from reproach for his own sake, the sake of wife and children, the sake of the army, the country and the government, which he offered his life on many fields to sustain, and believe me,

Respectfully yours,

F. J. PORTER.

GEN. U. S. GRANT—I inclose a copy of my defense before the court-martial, written by Mr. Eames and prepared from the imperfect evidence of fact on the record; but at that time, with the obstacles thrown in the way of getting evidence—all the evidence I could bring forward—it is substantially the same argument as now made.

Yours respectfully,

F. J. PORTER.

NEW YORK, November 9, 1881.

GEN. U. S. GRANT:

DEAR GENERAL—I intended, but accidentally omitted, sending you the other day the map referred to in my letter to Gen. Cox.

Gen. Cox's letter to Gen. Garfield, and all our correspondence, though in some degree private, are at your service to read if you desire them.

I have nothing to conceal and am ready to prove my unwavering loyalty and integrity wherever properly called into question.

Yours, truly and respectfully,

F. J. PORTER.

A SUMMARY

OF

THE CASE OF

GENERAL FITZ-JOHN PORTER,

BY

THEODORE A. LORD.

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SECOND EDITION.

SAN FRANCISCO :

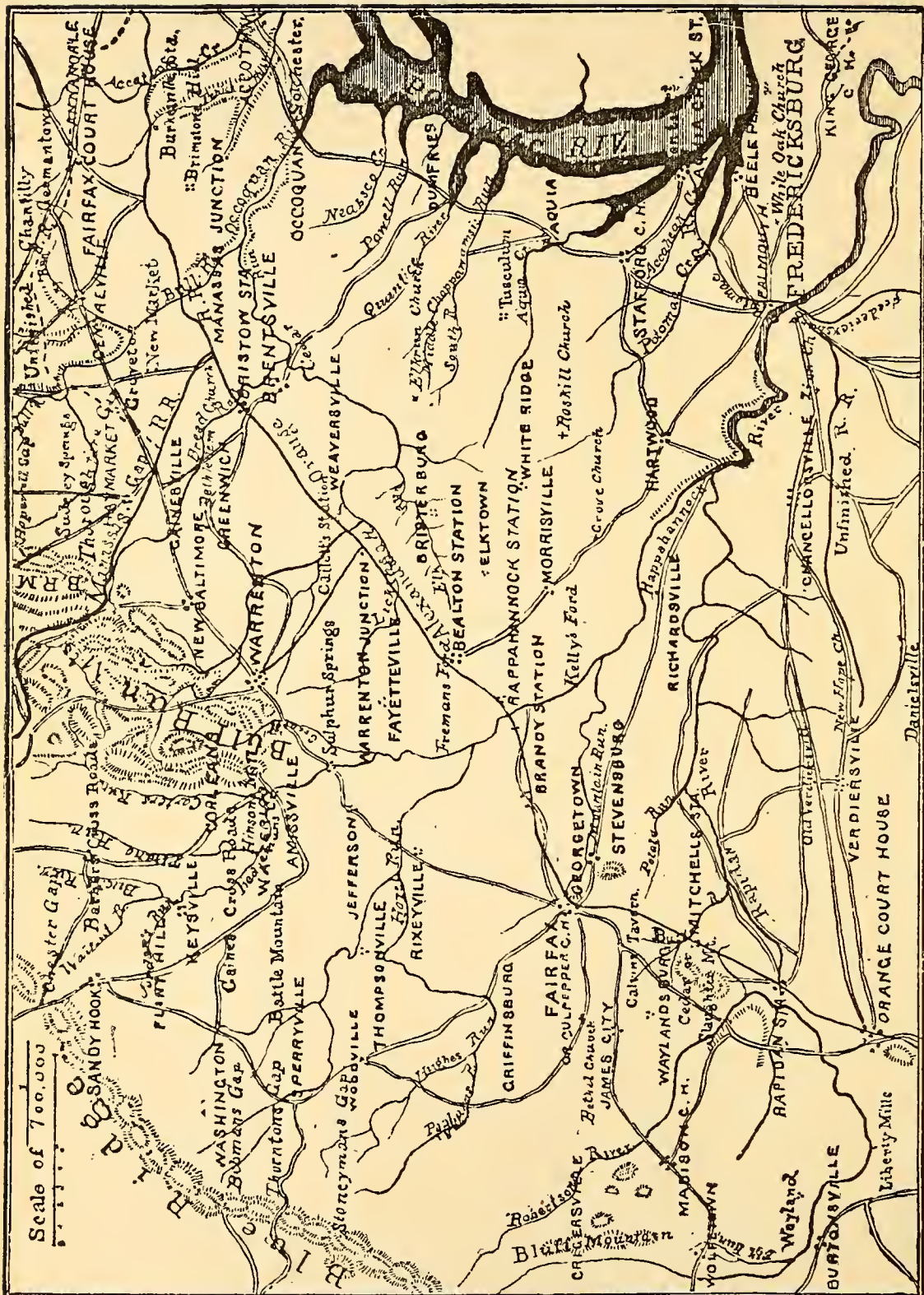
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GENERAL MAP OF THE SCENE OF POPE'S CAMPAIGN.

This map is copied, in a reduced form, from a map contained in that admirable work, the "History of the Civil War in America," by the Comte de Paris. I am indebted to Messrs. Porter & Coates, of Philadelphia, the publishers of that work, for their kind permission to use the map. The permission was specially given exclusively for this purpose. Owing to the process employed for reprinting, this map does not do justice to the beautiful execution of the original.

A SUMMARY

OF THE CASE OF

GENERAL FITZ-JOHN PORTER.

The recall of McClellan's army from the Peninsula enabled Lee to leave Richmond, and direct his whole force against General Pope. The latter, with about 42,000 men, was occupying a very advanced position, the main part of his force being in the vicinity of Cedar Mountain, while detachments guarded the fords of the Rapidan. He was confronted by Jackson with about 22,500 men. That enterprising commander had recently beaten Banks, in the Battle of Cedar Mountain, and was eager to obtain reënforcements so that he might resume the offensive.

Before the retrograde movement of the Army of the Potomac actually began, Lee dispatched troops to the support of Jackson, and prepared to surprise Pope in his dangerous position. Pope learned of this intention, prudently retired behind the Rappahannock, and held the line of that river from Kelly's Ford to the neighborhood of Freeman's Ford. On the 21st of August, 1862, Lee, with a total force of about 55,000 men, now fully released by the actual withdrawal of the Army of the Potomac, held the opposite side of the Rappahannock.

Being unable to surprise Pope, Lee determined to turn his right flank. On the 22d, Jackson, with his

three divisions and Stuart's cavalry, marched up the right bank of the river, and sent a small part of his force across at Sulphur Springs. That evening, in the midst of a furious rain-storm, Stuart pushed on to Catlett's Station, fired into a train of cars, captured all of Pope's staff papers, attempted, without success, to destroy the railroad bridge, and finally effected a safe retreat. The rapid rise of the river in consequence of the rain, checked Jackson's further progress, and also prevented the return of the force which had already crossed. Pope had, from the first, divined the purpose of Jackson's movement, and prepared to meet it; but, unfortunately, he was so inconstant in his plans, that he adopted a course of action which led only to a useless result. His first intention was to let Jackson cross with all his force, and then attack him while separated from Longstreet. For this purpose the troops were rapidly marched in the required direction. Next, he decided to cross the river and attack Longstreet while separated from Jackson. Then the troops were as rapidly marched in the opposite direction. They had hardly reached the positions last designated, when they were all ordered back again in the first direction, with the hope of intercepting the small force of the enemy which was isolated by the flood. Thus for three days the Federal soldiers were harassed and wearied by hurried and continuous marches and countermarches, only to find that Jackson had quietly withdrawn the brigade which had been endangered, and was preparing to make a far more serious demonstration.

On the 25th his whole force crossed the river at Hinson's Mill, and reached Orleans. Protected from attack by the Bull Run Mountains, he pursued his way

with all possible speed towards Thoroughfare Gap. Early in the morning of the 26th he passed through the Gap without opposition. That evening he cut the telegraph and tore up the railroad track at Bristoe Station. Still untiring, he pushed on that night for Manassas Junction. Before morning his advanced guard captured the place after a slight skirmish, and plundered and burned the vast quantity of stores collected there. He was now fully in the rear of the Federal army. He had stopped all of Pope's supplies, and had interrupted all communication with Washington. His movements had completely mystified Pope.

About noon of the 25th the latter was informed that Jackson was moving northward in force, but he could not divine the purpose or destination of the march. He believed that the enemy were going to the Shenandoah Valley, and took no precautions to withdraw his army or protect his communications and supplies. On the same day Lee moved Longstreet's corps up the river, into the positions vacated by Jackson. By a vigorous cannonade and by threatening movements of troops, continued through the 25th and 26th, he diverted attention from Jackson's march, and kept the Federal army in constant apprehension and activity. Late in the afternoon of the 26th, Longstreet crossed the river and followed the route taken by Jackson. It was evident that the two were acting in concert, but Pope was helplessly, almost despairingly, groping to find out what they intended to do. He seems to have thought of every direction but the one they took, and to have planned for himself every course but the right one. The result was a series of erroneous, contradictory and futile orders—

tedious and useless to follow in detail—which imposed upon the already exhausted and ill-fed troops, long and rapid marches by day and night in wrong directions, whence they were speedily recalled to go in other wrong directions. These harassing and ill-planned movements wore out the strength, spirits and confidence of officers and men, and left Pope as badly off at the end of them as he was at the beginning.

By the 26th of August, Pope had been reënforced by 23,000 men of the Army of the Potomac, (including the corps of General Fitz-John Porter), and he had previously received 8,000 men by the arrival of Reno's corps. His army considerably outnumbered Lee's, and he had the expectation of a large increase of force as soon as he should place himself where additional troops could reach him. The raid upon the railroad and telegraph at Bristoe Station partially disclosed the secret of Jackson's movement. On the morning of the 27th, Pope promptly and properly ordered his army to concentrate upon Gainesville. This step should have been taken sooner, but as it was, he had full opportunity to reap its advantages. The position of Gainesville commands the road leading through Thoroughfare Gap. That road would probably be taken by Jackson in case he should retreat, and certainly by Longstreet, in the endeavor to reach Jackson. Holding Gainesville in force, and strongly guarding the Gap, Pope would intervene between the two wings of the rebel army. No commander could have wished to be better situated. Having intercepted Jackson's most available line of retreat, Pope designed to pursue and defeat him, before he could be joined by Longstreet. The commands of

McDowell, Sigel and Reynolds reached Gainesville on the night of the 27th, and the rest of the army was within supporting distance. Hooker had a successful engagement that evening, at Bristoe Station, with Jackson's rear guard under Ewell, and the latter had retired in the direction of Manassas. Pope was exactly in the position in which he should have been, and wished to be; but in his zeal to pursue and, as he expressed it, "bag" Jackson prematurely, he threw away all the chances of *bagging* him at all. The troops, after toilsome marching, had no sooner reached the designated positions, in which they ought to have remained, than they were ordered to withdraw, at daylight of the 28th, and start for Manassas. Pope even defeated the efforts which his subordinates made to do something right in spite of him. McDowell had given orders for the disposition of the force under his command, (which included his own and Sigel's corps, and the division of Reynolds, altogether about 30,000 men), so that he could hold Thoroughfare Gap and the road leading from Hopewell Gap. When the order came from Pope to abandon that vitally important position, and march to Manassas, McDowell, though directed to take his whole force, assumed the responsibility of detaching Ricketts' division to guard Thoroughfare Gap, and delay the advance of Longstreet. This was as judicious and meritorious an act as was done during that campaign, but Pope blamed McDowell for having done it.

The order to march to Manassas was based upon the supposition that Jackson was there; but before the movement commenced he had abandoned that place, and had taken a strong position north of the Warrenton Turnpike. His front was protected by the cuts

and embankment of an unfinished railroad, and he held the woods and heights in rear of it. His left rested upon Bull Run, near Sudley Springs, and his right was near the Turnpike, between Gainesville and Groveton. More than 20,000 men defended a line only a mile and three quarters long. A. P. Hill was sent to Centerville, to draw Pope in that direction. This he succeeded in doing, and soon rejoined Jackson in the position described. The complete execution of Pope's order, therefore, would leave the way open to Thoroughfare Gap, so that Jackson could retreat, or Longstreet advance, at pleasure. But, as the Federal army was soon to learn, Jackson did not wish to retreat any farther than was necessary to secure a safe position, in which he could await Longstreet's arrival. Pope's dispositions favored the design most admirably and unexpectedly. The movement to Manassas was bad enough, but as if to enlarge the error, Pope, misled by Jackson's ruse, ordered nearly the whole army to Centerville. This was exactly *opposite* to the direction which it should have taken. The chance of retrieving so many false steps was well-nigh hopeless.

In the afternoon of the 28th, King's division of McDowell's corps, while making the retrograde march on the road to Centerville, unexpectedly stumbled upon Jackson, between Gainesville and Groveton. Then ensued the terrific combat of Gainesville, which lasted from five o'clock until nine at night, and ended as a drawn battle. That accidental engagement which showed, simply Jackson's zest for fighting and his ferocity in attack, Pope interpreted as a desperate attempt of the enemy to break through the forces which were supposed to be barring his retreat. That night, therefore, he issued orders for

the pursuit and capture of Jackson. But the plan was based upon a serious error. Jackson had no thought of retreating, but King who was supposed to be holding him in check, and Ricketts who was expected to detain Longstreet, did retreat. They, not knowing exactly what to do, though meaning well, actually did the worst thing possible under the circumstances. The one retired to Manassas, and the other to Bristoe. The road from Jackson's position to Thoroughfare Gap was thus left wholly unobstructed. As soon as Pope learned of the retreat of King, he sought to remedy the evil by ordering the reoccupation of Gainesville which he had so carelessly abandoned. But he was then too late; men could not march as easily or rapidly as orders could be issued; fatigue, hunger, uncertainty and mistake, could not fail to arise in a series of movements so complicated and conflicting. The control of events soon passed out of Pope's hands. He was in the power of Fate. Having sown the wind in mismanagement, he was about to reap the whirlwind in defeat.

About three o'clock in the afternoon of the 28th, Longstreet, accompanied by Lee in person, arrived at Thoroughfare Gap. Though delayed by Ricketts until dark, he gained full possession of the Gap that evening, and a considerable part of his force spent the night on the eastern side of it.

At sunrise the next morning (August 29th), his troops passed through it, and inspirited by the sound of battle, marched in haste to join Jackson. They reached their desired positions by ten or eleven o'clock. Pope seems not to have been aware of this, and made all his dispositions on that day, as if he was still dealing

with Jackson, alone and in retreat. How he could have formed or followed such an erroneous idea, it is difficult to see, for Jackson stubbornly held his position, and gave no sign of a retreat. Pope knew, too, that Longstreet was at the Gap the night before, and was therefore not more than ten miles from Jackson's position, with an unobstructed turnpike between. But, whatever his theory, if he had not misused his previous opportunity, he would have been master of the movements of both Jackson and Longstreet, for he would have defended the Gap, so that Longstreet could not pass through it, and would have held the only road by which Jackson could reach it.

After Lee's army was actually united, the only wise thing for Pope to do, as he himself realized, before fighting a great battle, was to withdraw to Centerville or some place in the rear, where he could take a favorable position, and rest, reorganize, re-supply and reënforce his wearied and famished army.

During the 29th, occurred that series of fierce but detached, desultory and fruitless combats, known as the battle of Groveton. The Federal troops attacked heroically, but they were in too small force in every instance, and were not adequately supported, so that they suffered great loss, without gaining any real success. That night and the next morning, Pope stubbornly refused to believe that any considerable part of Longstreet's force had united with Jackson, although he was most emphatically told by Porter and Reynolds, that the junction of the enemy was complete. Jackson's army remained in one place for two days and a half, and fought every force that came in sight; yet Pope, after two days of such rough handling as his

troops received, still hugged the delusion that the enemy were in full retreat. Although his head-quarters were, most of the time, within five miles of Jackson's lines, he seems to have been totally blind as to the enemy's real position and movements. Napoleon, whose knowledge of the art of war was equaled only by his knowledge of men, seems to have understood this kind of mental obliquity; for he says: "The first qualification of a general-in-chief is to possess a cool head, so that things may appear to him in their true proportions, and as they really are. * * * *"

There are some men who, from their physical and moral constitution, deck everything in the colors of imagination. With whatever knowledge, talents, courage, or other good qualities these may be endowed, nature has not fitted them for the command of armies, and the direction of the great operations of war."

Pope grew more sanguine as his errors developed, and at noon of the 30th, he ordered a vigorous pursuit of the theoretically retreating enemy. For this purpose he weakened the left of his line to strengthen the right. Lee saw the movement and let it go on, for he desired nothing better. When it had gone far enough to satisfy him, he advanced his right wing, in the hope of reaching the turnpike in rear of Pope, and cutting off his retreat. The stubborn defense of the Henry-House Hill, by Sykes, of Porter's corps, was probably the only thing that prevented the execution of the plan, and thereby saved the Federal army from total rout. Pope was badly beaten, and his army retreated to Centerville. Lee continued his movement upon the Federal line of retreat, and in the afternoon of September 1st, was fought the battle of Chantilly.

With that engagement the chapter of disasters in this tragedy of errors ended. McClellan was placed in command, and within fifteen days, gave the Army of the Potomac—so sorely tried, but always faithful and always brave—two victories, the first which had cheered it for many weeks, and the last which it was destined to experience for hopeless months. That army could not anticipate Gettysburg, the first success after South Mountain and the Antietam; but it could remember Malvern Hill, the last victory before those battles, and remember too, that the glory of Malvern Hill belonged—first, to McClellan, and next, to Fitz-John Porter.

THE CHARGES.

Having seen how Pope got into his “scrape,” let us now consider how he endeavored to get his reputation out of it. He must needs find some scapegoat to bear his military sins; indeed, it would seem as if it was almost beyond the capability of one man to make so many mistakes in so short a time. It was a matter of astonishment to the rebels themselves. Accordingly, he selected General Porter as most available for the sacrifice. The latter had done distinguished service and was conspicuous as a warm friend of McClellan. He was also a representative of that cultured and conservative regular-army element which, like Napoleon, clung to those antiquated notions so obnoxious to Pope and Stanton, “of taking strong positions and holding them,—of lines of retreat and of bases of supplies.” The contempt of this element for Pope was quite marked. Even Lee and Jackson seem to

have shared it, for upon any other hypothesis their movements were reckless, almost to insanity.

Pope modestly ascribed his defeat, not to its true cause, his own redundant incapacity, but to the misconduct of Porter. In consequence of Pope's representations (or misrepresentations), a court-martial was convened at Washington, on the 27th of November, 1862, to try Porter upon charges which involved the penalty of death. The court consisted of Generals Hunter, Hitchcock, Prentiss, King, Ricketts, Casey, N. B. Buford, Slough, and Garfield, with Holt as Judge-Advocate-General.

The charges were :

I. Disobedience of orders, under the 9th Article of War.

II. Misbehavior before the enemy, under the 52d Article of War.

Under the first charge there were three specifications of which the court found Porter guilty. These were substantially :

First. Disobedience to the order of August 27th, requiring him to march from Warrenton Junction at one o'clock in the morning of the 28th, and be at Bristoe Station by daylight.

Second. Disobedience, on August 29th, while in front of the enemy, to the Joint Order to McDowell and Porter, directing them to march towards Gainesville and establish communication with the other corps.

Third. Disobedience, on August 29th, while in front of the enemy, to what is known as the "4.30 P. M. Order," requiring Porter to attack the enemy's flank and rear.

Under the second charge, the specifications upon which Porter was convicted were, in substance :

First. Shameful disobedience to the "4.30 P. M. Order," on August 29th, while within sight of the field, and in full hearing of its artillery; and retreat from advancing forces of the enemy, without attempting to engage them, or to aid the troops who were fighting greatly superior numbers, and who would have secured a decisive victory, and would have captured the enemy's army, but for Porter's neglect to attack, and his shameful disobedience.

Second. Failure of Porter, all day on the same day, to bring his forces on the field, when within sound of the guns, and in presence of the enemy, and knowing that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed; and his shameful falling back and retreat from the advance of unknown forces of the enemy, without attempting to give them battle.

Third. Shameful failure of Porter, on the same day, while a severe action was being fought, to go to the aid of General Pope's troops, believing that they were being defeated, and were retiring from the field; and his shameful retreat away and falling back, under those circumstances, leaving the army to the disasters of a presumed defeat; and failure, by any attempt to attack the enemy, to aid in averting a disaster which would have endangered the safety of the Capital.

Those are the accusations, and they would be sufficiently serious, if they had any foundation in truth. General Gordon says that "the proceedings instigated

by Pope, were the most indefensible and the most indecent, ever submitted by our Government to the judgment of a court." *

On the 20th of June, 1878, a Board of Officers, consisting of Generals Schofield, Terry and Getty, was convened by President Hayes, to "examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said Board, and to report with the reasons for their conclusion, what action, if any, in their opinion, justice requires should be taken * * * by the President." This Board, after a patient and thorough examination of all attainable evidence, and after most elaborate arguments on both sides, by counsel of exceptional learning and acuteness, rendered a decision showing the errors which led to the conviction of Porter, and completely vindicating him from all the charges. They say: "Porter's faithful, subordinate, and intelligent conduct, that afternoon (August 29th), saved the Union Army from the defeat which would otherwise have resulted, that day, from the enemy's more speedy concentration. * * * * * Porter had understood and appreciated the military situation, and so far as he had acted upon his own judgment, his action had been wise and judicious."

Let us examine the case with all the light which is now thrown upon it, and see whether the opinion of the Court-martial, or that of the Board of Officers, is most in accordance with the law and the evidence.

* "The Army of Virginia from Cedar Mountain to Alexandria." George H. Gordon. p. 328.

The newly-discovered evidence presented to the Board, was not used or desired for the purpose of making a new defense; that is, one in any way different from that maintained before the Court-martial.

Porter's vindication was not an afterthought. It did not arise from subsequently discovered and accidental excuses for action which was reprehensible at the time. He based his conduct at the time upon what he then knew, and he justified it by that, and that only. He proved beyond a reasonable doubt, all the facts which he alleged, and which were ample for his justification. But the court was not convinced, and condemned him. The new evidence simply confirms the previous defense, and conclusively establishes as absolute truth, what the Court-martial chose to consider baseless pretense.

There is one accusation which requires no argument, and may as well be disposed of summarily. That is, all the matter relating to a retreat, whether shameful or otherwise. There was no retreat by Porter, as charged, and no semblance of any; nor was there any evidence of a retreat. In fact, the evidence was positive to the contrary. The verdict upon this point was made, as the saying is, "out of whole cloth." It was simply false. Some exercise of imagination is necessary to account for it, and more of charity to excuse it.

Taking the accusations in their order, the first relates to

THE NIGHT-MARCH FROM WARRENTON JUNCTION TO BRISTOE STATION.

On the night of the 27th of August, Porter was at Warrenton Junction with orders to march to Greenwich as soon as Banks should relieve him at the

Junction. His corps numbered about 10,000 men. One of his divisions had marched that day from twelve to fourteen miles; the other, nineteen or twenty miles. The troops had been marching with but little intermission for thirteen days previously, sometimes by night as well as by day, and always rapidly. They were very much worn with fatigue, and had suffered greatly from the heat, dust, and lack of food and water. For several days they had lived upon a scanty supply of coffee, hard bread and sugar, or upon what they could pick up in the neighboring cornfields and orchards. Morell's division which had marched the farthest that day, did not reach camp until after sunset, and from the delay in getting supper, the men were not in bed at ten o'clock. About that hour Porter received the following order:

HEAD-QUARTERS, ARMY OF VIRGINIA,
Bristow Station, August 27, 1862.
6.30 p. m.

GENERAL:— The Major-General commanding, directs that you start at one o'clock to-night, and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send word to him to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place. Be sure to

send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of Major-General Pope,
 GEORGE D. RUGGLES,
 Colonel and Chief of Staff.

Major-General F. J. PORTER,
Warrenton Junction.

P. S. If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the Junction, instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

By command of Major-General Pope.
 GEORGE D. RUGGLES,
 Colonel and Chief of Staff.

The distance to Bristoe Station was ten miles. The only road leading there from Warrenton Junction was crooked and narrow, in some places not more than ten feet wide. It ran, for a considerable part of the way, either through or along the edge of dense woods. It was full of little stumps, and seemed to be a newly cut military road. It was crossed by a dozen or more small streams, whose beds were like quicksand, and whose banks were either swampy and fringed with thick bushes, or so high and abrupt as to be difficult of ascent. It was encumbered at this time by the wagons of the whole army, some 2,000 to 3,000 in number, which had been pouring into it from two directions during the entire day. In its windings, it several times crossed the railroad track, upon which, by General

Pope's order, trains were running during the greater part of the night. Such was the road over which the troops were obliged to march. There were no open fields which they could take. The adjacent country was in some places swampy, and the open spaces which would have been otherwise passable, were occupied by the wagons parked in confusion.

At ten o'clock, the time when the order was received, the night was extremely dark. Even a witness for the prosecution says that it was as black a time for a while as he ever saw; he could not see six feet except by the flashes of lightning. General Roberts who made the charges, and Colonel Marston, a witness for the prosecution, both say it was quite dark; the latter was out on a picket line and lost his way.

General Patrick says: "It was one of the darkest of nights." Lieutenant-Colonel Brinton, with two officers, was two hours in going three miles on horseback along the road described. He says that they ran into a tree upon one side, or a wagon on the other, without seeing it until they were upon it. In the open plain they could not see a wagon fifteen feet off. He lost his way, as did many officers that night, going singly or with escorts and guides. Colonel Ruggles was lost in going a few hundred feet from the bivouac. The whole night was cloudy and threatening. About ten o'clock, and again before morning, there was a drizzling rain.

Altogether, thirteen witnesses, two of them for the prosecution, swore before the Court-martial that the night was quite dark; many said very, or unusually, or extremely dark. Their testimony is supplemented

and strengthened by the statements, before the recent Board of Officers, of fourteen others to the same effect. The experiences hereafter related will show whether those opinions were well founded or not.

Upon the receipt of the order, General Porter stated its purport to his principal officers, Generals Sykes, Morell and Butterfield, and handed it to them to read. They earnestly remonstrated against starting at the time named. Porter replied in substance, "There is the order; it must be obeyed." The officers urged the fatigue of the men, the darkness of the night, the obstructions in the road, the loss by straggling, and the delay and confusion which would inevitably ensue, as reasons for postponing the march until daylight. They further argued that they could make more effective progress, and the troops would be of more service, by starting at daylight than at one o'clock. The officer who brought the order had been three hours and twenty minutes on the way. He said that it was very dark, and he had experienced much difficulty with the wagons. Porter had been informed by his own officers, earlier in the evening, of the bad condition and obstruction of the road. "After considerable discussion, and with a good deal of reluctance," he partially yielded to the protests of his officers, but ordered them to move promptly at three o'clock.

There were other considerations which were obvious to Porter, in connection with Pope's order.

First. Literal compliance with it was impossible in the time mentioned. To start at one o'clock and reach Bristoe at daylight, allowed only three hours for a march of ten miles. Three miles an hour is very rapid marching for troops on a good road and with

daylight. Yet Porter was expected to march at that rate or faster, over such a road as he had, and in the darkest part of an unusually dark night. In other words, he was required to take 10,000 foot-soldiers broken down with fatigue, a given distance, in *less time* than that necessarily taken by a single horseman with an urgent order.

Second. Although the order was sufficiently urgent, as were most of Pope's orders during all the time of these events, yet it gave the reasons for haste, and those reasons hardly bore out the urgency of its terms. They showed that the purpose of the order was not to meet any present danger of attack, but to pursue a retreating enemy and drive him from the surrounding country. The march to Bristoe was only the first step in a movement which required further marching for an indefinite distance, and perhaps fighting. As the literal execution of the order would have been very difficult under any circumstances, and was wholly impossible, as we have seen, under those existing, it was a matter of discretion with Porter so to use his men that they would be most effective for carrying out the general purpose of his commander. The question occurred to Porter, whether it would best subserve that purpose to call his weary men up at half-past eleven o'clock—for it was necessary to sound the reveille at least an hour and a half before starting—and keep them on their feet, uselessly waiting or hopelessly laboring until daylight for the removal of obstacles which, by daylight, could be easily dispersed, and then bring them in unfit for further service until after a long rest; or to rest for a few hours, and thereby enable them to accomplish the march with comparative

ease, arrive as soon as they could otherwise, and be fit for anything that might be afterwards required of them. To needlessly deprive the troops of rest, that they might reach Bristoe no earlier, and then be obliged to halt half of the day from weariness, would have been about as senseless a thing as Porter could do; for, to the uselessness of the force would have been added the straggling and general demoralization which fatigue produces.

Third. The order directed Porter to come forward with his "*whole corps,*" or such part of it as was with him. Under this, he would not have been justified in attempting to hasten his march, by taking his infantry and leaving his artillery. The exception in the postscript of the order, in reference to leaving a *section* of artillery in a certain contingency, implied as strongly as could be, that he was expected to bring the rest of his artillery with him.

But, it may be said, if Porter knew the difficulties, and could not effect the desired object by starting at one o'clock, that was the strongest reason for starting earlier rather than later. So it was, if men were mere machines, driven by a force which requires no rest, and which can be turned on and off at pleasure. If anything was to be gained in the darkness, and the men could endure the fatigue, Porter's duty certainly was to urge them forward, from the time he received the order; but of the advantage of moving, and of the condition of the men, he was the sole responsible judge. The question with him was, how could he soonest reach Bristoe, with his troops in condition for further service? He yielded his own desire to move at the time mentioned in the order, to the better

judgment of subordinates whose zeal and capacity were never questioned; and in so doing he acted wisely. He gave his tired troops a few hours of needed rest, and accomplished all that could have been effected in many hours of darkness. His only fault was in not deferring the time of starting until daylight.

He did not leave Pope in ignorance of the situation, but wrote him stating the difficulties, and asking for cavalry (as Porter had none), to clear the road. Pope admits receiving that dispatch before daylight; and he also admits that he received one or more requests to have his end of the road cleared; but, as in the case of several other writings which were of value to Porter, the dispatches were demanded of Pope, but were never produced. Porter also requested Lieutenant-Colonel Brinton who arrived about twelve o'clock, to bring up some of the First Maine Cavalry from Catlett's Station. He sent out two officers to explore the way, and they were obliged to dismount and feel for the road. Lieutenant-Colonel Locke, Porter's Chief of Staff, was severely injured by falling over a stump in the middle of the camp.

At three o'clock, when the march commenced, the obstacles encountered fully equaled the expectations. It was with great difficulty that officers formed their commands, or men found their places in the ranks. An aid-de-camp who was sent to find the way, and guide the column, though assisted by several soldiers, returned and said he could not distinguish the road. The leading brigade was obliged to light candles in going through the woods. Artillery and wagons were mired not five hundred yards from the camp; the wheels sank up to the hubs in the marshy soil.

Lieutenant (now Major) Randol, a most capable officer and remarkably intelligent witness, says that with all the ingenuity he could use in cutting his way, and extemporizing a crossing, *it took him two hours to get his battery across one stream.* By the time the commands were fairly extricated from the camp, they came upon the wagon-train. Wagons and artillery were stalled on both sides of the streams, and in the middle of them. Wagons blocked the road, and were four or five deep on the sides of the road. General Warren says they were “pell-mell,—‘*parked,*’ like a lot of ice that jams in on the shore.” That describes the condition vividly. Many miles of such confusion had to be cleared up, when it was so dark that one could not distinguish a wagon five yards off. The teamsters were insubordinate, and were acting without system, and under no authority. They had not seen a wagon-master for a week, and were going independently, they said. When driven off the road, they would turn into it again, and thereby break up the commands and cause great disorder and delay. General Sykes was obliged to station officers with drawn swords, to keep them back. Another officer threatened to shoot them. Sykes says that he never had so much trouble with wagons in his life. He was obliged to halt his brigades for an hour, on account of wagons intervening. Lieutenant-Colonel Locke says that the work at Savage’s Station and White-Oak Swamp was holiday work to that. Many of the troops were under arms at two o’clock, and remained in the road until daylight or after, waiting to take their places in the column. This experience amply justifies the judgment of Porter and his principal officers, as to the uselessness of starting any earlier than they did. Porter wisely refrained

from harassing his men, by trying to do what he knew to be impossible. It was proved, and was admitted by a witness for the prosecution, that General Porter personally, and his entire staff, used great exertions to clear the way and expedite the march. But little progress could be made until daylight; after that, the difficulties were more easily overcome, and the command made good speed to its destination. General Porter rode on ahead and reported to Pope about eight o'clock in the morning, and his corps was fully up by ten o'clock, or a little after.

A march of ten miles in seven hours, under such difficulties, indicates not only very creditable, but extraordinary celerity. The experience of other persons and other commands, on the same night, will afford us a good standard of comparison. Two officers of General Pope's staff, mounted of course, with a guide, left Warrenton Junction for Bristoe at midnight, lost their way, and did not reach their destination until seven o'clock in the morning. General McKeever, with a small escort, required four hours to ride over the same road in the afternoon of the 27th. General Patrick, of King's division, was from dusk until midnight, about five hours, in marching seven or eight miles, on a turnpike road. At ten o'clock, the time when Porter received his order, Patrick's orderlies and a part of his staff dismounted to feel for the road. He himself was lost. Men were placed across the road, lest the commands should pass the points where they were expected to bivouac. It was so dark, that the openings on the side of the road could not be seen.

Ricketts, with his division, started at two o'clock in the morning, marched on a fine turnpike road

obstructed by only 200 wagons, and in *nine* hours had not gone twice the length of the division front from where he started. The part of this command to which Captain Duryea belonged left Warrenton by daylight, and was engaged until midnight in marching three or four miles. The troops were obliged to halt every ten or fifteen minutes. The commands of Kearney and Reno reached Bristoe about the same time that Porter did, although they had marched only four miles, and had been ordered, as Pope expressed it to Kearney, in language of oriental fervor, "at the very *earliest blush of dawn*," to push forward with all speed, so as to "*bag the whole crowd*." Yet Porter's alleged delay, which in reality was no delay at all, was a willful violation of orders, because to one of Pope's staff officers he *looked* as if he was a traitor! And the Court-martial listened to such contemptible nonsense, and condemned a gallant and faithful soldier.

Porter gave his troops two hours of needed rest, and reached his destination as soon as he could have reached it if he had started earlier. The most effective part of his march must have been made after daylight, in either case; but in the one his troops were in condition for further service, and in the other they would have been useless. As it was, he arrived at Bristoe in time for every purpose for which Pope required him. The two hours delay in starting made no difference to Pope whatever. Porter was at hand for disposal as Pope saw fit. Pope had "much conversation" with him that morning, and made no complaint of the delay—"said nothing about obeying or disobeying." He afterwards expressed himself as satisfied with Porter's whole conduct, excepting one trivial matter which even the Court-martial ignored.

Pope made no plans or disposition of his forces, different from what he would have made if the delay had not occurred. He said that the necessity had passed. The movement he was making, was the withdrawal from Gainesville, the most fatal error of that long series of errors, and he was soon obliged to countermand it. If anybody was to be cashiered for the false movements of that day, it should have been Pope, not Porter.

Despite the urgency of the summons, Pope had no use for Porter after he got him. The latter remained at Bristoe the entire day and night of the twenty-eighth. Twice during the day, he sent to Pope for orders, and twice received the answer, "Tell him to stay where he is; when wanted he will be sent for." It was not until about six o'clock in the morning of the 29th, that he received orders to move.

In judging of Porter's conduct throughout these events, we must bear in mind the rule which results from the ever-varying nature of circumstances in military affairs. It is stated by Napoleon, and is so well settled as to have become a maxim. He says: "An order requires passive obedience only when it is given by a superior who is present on the spot, at the moment when he gives it. As the superior is then familiar with the state of affairs, he can listen to objections, and make the necessary explanations to the officer who is to execute the order."

It follows therefore, that, in the absence of the superior, an officer is always justified in using a reasonable discretion. As far as circumstances will admit, he is expected to comply with the spirit of the order, but he is not a slave to its letter.

Porter used his discretion in this instance, rightfully and reasonably. His "disobedience" consists solely in his not doing an impossible act for a useless purpose.

On this head, we may justly conclude :

First. That it was absolutely impossible for Porter to obey the order literally.

Second. It being so, he had a right to use his discretion as to the manner in which he could best fulfill the intention of his commander.

Third. He used that discretion reasonably and efficiently.

Fourth. His action, whether right or wrong, proved to be of no earthly importance.

There was nothing in Porter's conduct in this instance, to base charges upon, and nothing deserving the name of evidence, upon which to found a conviction. But a Court which could find the fact of a retreat when there was no retreat and no evidence of any, could as easily find the fact of disobedience, when there was no disobedience and no evidence of any. It is but fair to assume that this charge relating to the 28th of August, was entirely an afterthought—a make-weight—and would never have been heard of, but for the occurrences of the succeeding day, and Pope's inglorious failure.

As the charges of disobedience of orders and "shameful behavior" on that day, grow out of the same events, and are closely interwoven, we will treat of them together. By knowing exactly what Porter was able to do, and what he did, we can judge whether he disobeyed or committed any "shameful" act.

EVENTS OF THE 29TH OF AUGUST.

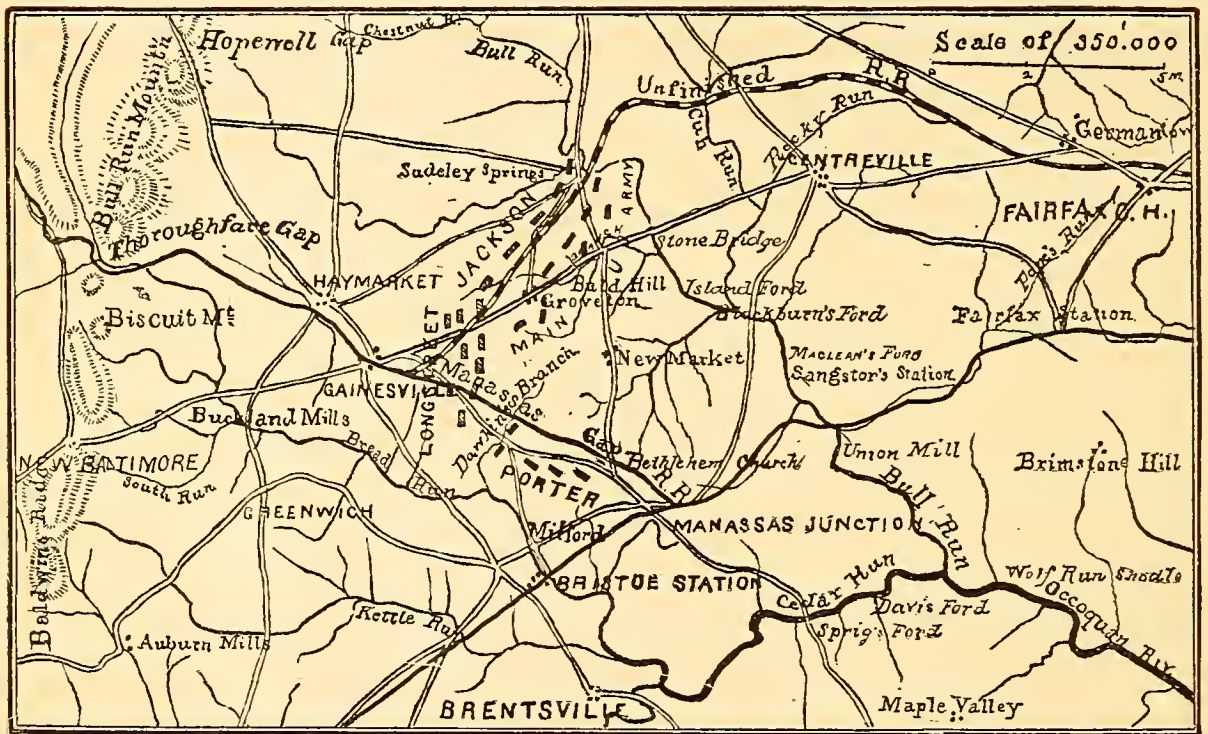
Pope swore before the Court-martial that he feared the arrival of Longstreet at any moment, and expected it *certainly* during the afternoon of the 29th, (and there was every reason why he should have expected it earlier); yet in the orders which he issued to Porter about ten o'clock in the morning of that day, he says: "The indications are that the whole force of the enemy is moving in this direction, at a pace that will bring them here (Centerville) by *to-morrow night or next day.*"

Again, Pope stated in his Report to the Committee on the Conduct of the War, (and he has sworn to substantially the same thing), that about sunset of the 29th, the main body of Longstreet's force began to reach the field; that he is "positive," up to five o'clock in the afternoon, Porter had in his front no considerable force of the enemy; that he "believed then," as he is "very sure" afterwards, that Porter might have turned Jackson's flank and attacked his rear, up to eight o'clock in the evening, before Jackson could, *by any possibility*, have been sufficiently reënforced; that during the whole night of the 29th, and until noon of the 30th, the advance of the main army under Lee was arriving on the field, with fresh forces even then coming from the Gap. In other words, Pope claims that Lee was *twenty-four hours* behind time, in going a little over nine miles; and that there was not a rebel on the field, excepting Jackson, until night, and very few then; yet we find him writing to Halleck, early the next morning, August 30th: "We fought a terrific battle here yesterday with the *combined forces* of the enemy, which lasted with continuous fury from daylight until after dark."

How these and many conflicting statements of Pope's are to be reconciled, can be known only when the Recording Angel exhibits and explains the complicated entries which must have resulted from this campaign. Pope himself declined the opportunity for explanation when he was invited to testify before the Board of Officers. All of those statements cannot truly indicate what Pope believed. The question arises, did he intend to deceive his subordinate at the time, and thereby entrap him into a false movement which would cover his own delinquencies in case of failure, or did he afterwards intend to deceive the public and the Court, and thereby secure the condemnation of that subordinate, when on trial for his life, after Pope's failure was complete? It is difficult to decide which is the more charitable view to take of such contradictions. I am disposed to conclude that Pope really did believe what he said in his order, and did not believe what he said afterwards, though when he knew Longstreet had possession of the Gap the night before, it is hard to see how he could suppose that the latter would be from thirty to forty-eight hours in marching fifteen miles, to Centerville. On the other hand, it is almost equally hard to understand how he could expect Longstreet to be from the night of the 28th till the afternoon of the 29th in marching nine miles to Jackson's position. It is a puzzle in either view. Pope's ideas of the rebel movements throughout, were so erratic, that it is doubtful if he had at any time a clear discernment of what he really did think. His was a case of "mournful obstinacy in seeing things not as they were, but as he thought it to his interest they should be."*

* Quatre Bras, Ligny and Waterloo. Dorsey Gardner.





OPERATIONS OF AUGUST 29TH.

This map is compiled from maps contained in two works of the highest excellence and interest, viz. : "The Army under Pope," by Mr. John C. Ropes, published by Charles Scribner's Sons, New York, and "The Army of Virginia from Cedar Mountain to Alexandria," by General George H. Gordon, published by Houghton, Osgood and Company, Boston.

My thanks are due to Mr. Ropes, General Gordon and Charles Scribner's Sons, for their kindness in permitting the use of their maps. Their permission was specially given to me solely for this purpose.

certainly furnished a very bad omen for the operations of that day.

During the night of the 28th, believing that King had intercepted Jackson's retreat, Pope ordered the whole army to begin the pursuit at daylight the next morning. But this pursuit seems to have been by a sort of inverse movement, for he ordered the commands of Hooker and Porter to march to Centerville, the farthest point in the rear yet reached, expecting them to fall in behind Kearney who was to advance at an earlier hour directly down the turnpike. Porter was at Bristoe station where we left him, and had he been ordered to march towards Groveton by the Sudley Springs road, he would have saved about ten miles of distance and a corresponding length of time. When he received the order, about six o'clock in the morning, it was evident to him from the location of the battle of the previous night, and from the cannonade already in progress that morning, that the enemy were near Groveton and far from Centerville. Though he realized the error, he obeyed promptly, and had gone two miles and a half beyond Manassas, when he received the usual countermand by an order, first oral and afterwards in writing, as follows :

HEAD-QUARTERS ARMY OF VIRGINIA,
Centerville, August 29, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious or we will lose much.

JOHN POPE,
Major-General commanding.
Major-General PORTER.

The reason for this order was that Pope had learned early in the morning of King's retreat to Manassas. He knew that the way was open for Jackson's escape, and he greatly feared that the latter would not stay to undergo the *bagging* process. Accordingly, he ordered Sigel to attack the enemy as soon as it was light enough to see, and if possible bring him to a stand. By sending Porter with a strong force in the direction of Gainesville, he hoped to repair the error of abandoning that place the day before. Soon after this order was issued, Pope heard that Ricketts had been driven from the Gap by Longstreet the night before, and had retired he knew not where. There was nothing, therefore, to prevent the junction of the rebel forces, unless Porter could reach Gainesville before that event could occur. Herein, Pope committed that old error, of which history furnishes so many lamentable examples, and military science such positive prohibitions, of directing converging columns upon a point which the enemy can reach first. Even before Porter received his order, Longstreet's troops were marching through Gainesville, and the junction with Jackson was virtually complete. About nine o'clock or half-past nine, Porter repassed Manassas, and pursued his march towards Gainesville on the road leading past Bethlehem Church. At Manassas he was joined by McDowell, and from him learned the situation of the night before, and the imminence of Longstreet's arrival. McDowell was aggrieved that King's division had been taken from him and given to Porter, and Porter was dissatisfied because the orders which he received were so conflicting, and were delivered, sometimes orally, by persons

whom he did not know and of whose authority he was not certain. The remonstrances of both officers reached Pope about the same time. To satisfy both, he sent to them what is known as

“THE JOINT ORDER.”

It was as follows :

HEAD-QUARTERS ARMY OF VIRGINIA,
Centerville, August 29, 1862.

Generals McDowell and Porter :

You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel and Reno are moving on the Warrenton Turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centerville, to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night ; which were to hold his position on the Warrenton Turnpike until the troops from here should fall upon the enemy's flank and rear. I do not even know Ricketts' position, as I had not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of the corps as soon as practicable.

If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be had in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that

the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own head-quarters will be for the present with Heintzelman's corps, or at this place.

JOHN POPE,
Major-General commanding.

Porter had continued his march from Manassas for five miles along the road to Gainesville, until, about half-past eleven in the morning, he reached a small stream called Dawkins Branch. There two scouts were captured, who said that they were Longstreet's men, and that Longstreet's corps was in Porter's front.

On the hills a little distance in advance, the enemy's skirmishers were seen, while beyond, in the road in front, and on the turnpike, clouds of dust which rose above the trees, indicated the presence of a large force. Porter following his orders to push forward with King's division upon Gainesville, prepared for action. He threw out a regiment of skirmishers, deployed his leading division in line of battle, and sent Butterfield's brigade across the stream, to occupy a commanding hill. The skirmishers were exchanging a few shots with the enemy, when about noon an officer arrived with the Joint Order. Shortly afterwards McDowell, who had accompanied the column from Manassas, rode to the front and showed to Porter his copy of the order. Before the receipt of that order, there is little doubt that McDowell had no authority over Porter, and he exercised none; after its receipt, it is certain that he, as the ranking officer, was entitled to command the whole force, while he remained with it. The conditions were precisely those contemplated by the (old) 62d Article of War. This was understood and accepted by both. McDowell saw the preparations

for attack, and heard the shots of the skirmishers. Almost the first thing said by him was, "Porter, this is no place to fight a battle; you are too far out already. Put your troops back into the woods," or words to that effect. In consequence of these suggestions, which were in reality orders, Porter suspended his preparations for attack. McDowell showed him a dispatch just received from General Buford, stating that seventeen regiments, one battery and 500 cavalry had passed through Gainesville at a quarter before nine o'clock that morning. This they knew of course was a part of Longstreet's corps which had driven Ricketts from the Gap the night before, and they also knew that the rest of his command would be closely following. The appearances in their front, the capture of the scouts and the dispatch of Buford indicated, unmistakably, that Longstreet's force was before them, and that the rebel army was united.

They discussed the Joint Order, especially the requirement imperatively repeated, that they should be in a position from which they could reach Bull Run that night or the next morning. It was doubtless that requirement which McDowell had in mind, when he said, "You are too far out already; that is, too far from the rest of the army, and the point of concentration behind Bull Run. They were then, at noon, eight miles from Bull Run, and the troops were in a condition bordering on starvation.

An advance was evidently impossible without fighting a battle, and a battle, especially against Longstreet's corps, was forbidden by the tenor of the Joint Order; for besides the necessity of supplies, it was the expected arrival of his force, that was given

as a reason for the imperative injunction to retire. McDowell and Porter rode over to the right to see if they could not, by a flank march across the country, establish the communication directed by the order. This was found to be impracticable, and it was finally agreed that the best way to carry out the purpose of the order, under the discretion allowed by it, was for McDowell to take King's division of 8,000 men, march up the Sudley Springs road, directing Ricketts to follow, and thereby form a connection with the other corps. Almost immediately McDowell started.

It is certain that McDowell gave up the idea of Porter's further advance, or of his fighting in that place, as soon as he decided to take King and Ricketts away; for he remarked to General Patrick, soon afterwards, "Porter has gone as far as he can go;" and McDowell certainly would not have withdrawn 15,000 men, to go he knew not where, at the very moment when he expected an attack to be made by the remaining 10,000.

It is manifest, and McDowell testifies, that up to the time when he left, which was shortly after twelve o'clock, everything was done by the joint force that should have been done. If not, then the fault was McDowell's and not Porter's. After the receipt of the Joint Order, Porter was a subordinate, and could do nothing without McDowell's consent. It was for McDowell to say whether there should be a halt, or an attack, or, as he finally decided, a separation of their forces. If he had wished to attack, he had immediately in hand 17,000 or 18,000 men, and by ordering up Ricketts, could have controlled a force of 25,000. They were tired and hungry to be sure, but still

effective. If an attack was to be made at all, it should have been made with all the force available, and McDowell was too experienced a soldier to think otherwise. He is in no wise to blame for not making an attack. Under the injunctions of the Joint Order and the evident necessities of the army, as he said, it was no place to fight a battle. An isolated engagement, even with 25,000 men, without communication and without supports, against a presumably superior and actually equal force of the enemy, on their own ground and with full facility of concentration, would have been a hazardous and reckless undertaking. Such a rash venture was not warranted either by sound military principles or by the terms of the Joint Order. The order was to effect communication, then halt, and afterwards retire.

Even the discretion allowed was limited by the one consideration which was to be steadily kept in view, viz.: the necessity of retiring behind Bull Run, because the enemy who then actually confronted them, was slowly coming! The order implied that, if they were to fight at all, especially against Lee's united army, the battle should be behind Bull Run. The rules of the military art dictated the same thing. Pope has testified that he did not desire to pursue Jackson, even if alone, farther than Gainesville, on account of the necessity of retiring for supplies. It must be admitted that an order to march *until communication is established, then to halt, and afterwards retreat*, is not of such an inspiring character that, like Colonel Hamilton's speech at Yorktown, it would lead a man to "*storm Hell*" in response to it!

McDowell wisely refrained from battle then and there, and properly decided to use the discretion allowed by the letter of the order, to carry out its spirit. He took the divisions of Ricketts and King, and went to seek the communication which could not otherwise be had.

Porter was convicted of disobeying the Joint Order. But in what did that disobedience consist? His actions are well known, and the order speaks for itself. There cannot be pointed out one particular in which he disobeyed it. He was directed to march *towards* Gainesville, and he did so, as far as he could go. He could not go far enough to effect the communication with the other corps, because the enemy stopped him; and for a similar reason the other corps could not reach the place where they were expected to be. This Porter knew, by the cannonade that he could hear east of Groveton, by Buford's dispatch, and by the dust on the turnpike. Therefore, if by any means he had gone all the way to Gainesville, he would not have accomplished what the order intended; for the other corps were four miles and more from Gainesville, and never got any nearer. He did not fight it is true, but a direction to fight cannot be wrung from the terms of the Joint Order; nor can any meaning be derived from it, even from the discretionary part, which does not discountenance a battle in front of Bull Run. So it appeared to McDowell, when he had control of a force of 25,000 men. When he declined to fight with that force, and took it away, as he had a right to do, if he saw fit, it was certainly not Porter's duty to fight alone, nor would he have been justified in doing so. If the Joint Order

did not command McDowell to fight, it did not command Porter to fight. As he disobeyed it in no other respect, it may be asked, upon what ground then did the Court-martial condemn him? We are obliged to rely upon conjecture for the answer, just as the Court relied upon it for the facts; and the only rational theory that we can frame to account for so strange a conclusion, is, that it was the result of the same kind of judicial jugglery that could exhibit the fact of a retreat when there was no retreat.

It seems there was something said by McDowell which was erroneously construed into an order to fight. It made no difference that the remark with its attendant circumstances was not susceptible of such a construction; that it was not understood by Porter, and would not have been binding upon him if it had been understood; that it would have been ill-judged if it meant what it was supposed to mean; or that it came from McDowell when Porter was charged with disobedience of Pope. All this was ignored. There was a supposed order to fight, and Porter did not fight; so, because it was erroneously supposed that he disobeyed McDowell's order, he was convicted of disobeying Pope's order. That is certainly the most charitable theory by which to account for the verdict. If that was not the reason for it, then, like the finding in respect to the retreat, there was no reason for it.

There is considerable dispute as to what directions McDowell gave Porter when he decided to go away. McDowell admits that they were vague, and does not fully recollect what conversation he had with Porter. He thinks he said to Porter: "You put your force in here, and I will take mine up the Sudley Springs road,

on the left of the troops engaged at that point with the enemy," or something to that effect. This, Porter has always denied ; and it is in evidence that, as McDowell rode away, Porter called to him : "What shall I do ?" To this McDowell made no response, except by a wave of the hand, and Porter saw him no more that day. Whatever McDowell said was evidently not understood by Porter ; and it would not be material now, if it had not apparently formed the ground of the very false conclusion by the Court-martial.

No argument is needed to show the inexcusable nature of a verdict based upon such a total variance between the allegation and the proof. McDowell's remark, however it may be interpreted, was not an order which was binding upon Porter, after McDowell left him ; more especially, if it was opposed to the spirit of the order of their common superior, General Pope. Even if Porter heard the remark, he could not properly derive from it, the meaning ascribed to it by the Court. He could not suppose that McDowell meant for him to attack, then and there, with 10,000 men or less, when McDowell was withdrawing 15,000 troops to go he knew not how far away. McDowell was too good a soldier to order an attack in that manner, and Porter was too good a soldier to suppose that he would be expected to attack unknown numbers in that manner. If McDowell made that remark, "you put your force in here ;" Porter could only understand, under the circumstances, what McDowell doubtless intended to be understood, that the expression referred to *place*, and not to time or manner. It meant, not, put your force in now, but *when* you put your force in, do so here. It meant, not, fight a battle alone with a

diminished force and without communication, but, you remain here for future operations, while I go to establish the communication directed by the order. This view is borne out by McDowell's testimony, where he says: "I did not venture to do anything more than indicate the *place where* I thought he was to apply that force;" and that a skirmish line, if it was according to Porter's discretion, would have fulfilled the order. It is evident the order meant nothing more than for Porter to stay where he was. In this view, and in this only, the remark in question is consistent with the other expressions which McDowell is shown to have used about the same time, that this was too far out, and "no place to fight a battle," (as they were then situated), and again, "Say to him (General Porter) that I am going to the right, and will take General King with me. I think he had better remain where he is, but if it is necessary for him to fall back, he can do so upon my left." Can it be supposed that McDowell would order an immediate attack with 10,000 men, when he thought it was too far out, and no place to fight in, with 25,000 men?

When McDowell declined to make an attack in that position with 25,000 men, and took away 15,000 of them into the wilderness, Porter supposed, as it was reasonable to suppose, that he did so for the purpose of bringing the whole army into communication, in accordance with the intent of the Joint Order, and with sound military judgment. Porter did not and could not suppose, that he was expected to attack, or would be justified in attacking, before that communication was established, and McDowell was in a position to co-operate with him. As war is not a conjectural

science, he was right in waiting until he *knew* whether that co-operation was assured or not. In fact, he heard no more from McDowell until night, and during all the afternoon he was left to his own resources and the guidance of his own judgment.

McDowell's suggestions, whether they were, to fight, or not to fight, did not add to, or diminish Porter's responsibility, after McDowell left him. Nor did they afford him any guidance, except to influence him to remain where he was, and await further knowledge of McDowell's movements.

It was Porter's duty to act for himself according to the best light that he could obtain from the orders before him, and from sound military principles.

We have seen that when Porter commanded King's division in addition to his own, and was acting upon his own responsibility, under orders to march to Gainesville, he prepared to fight his way there. He desisted from attack, only when he was superseded by McDowell, under orders which discountenanced a battle; and was actually directed by him, not to fight. If a battle was to be fought by virtue of the discretion allowed, it was McDowell's duty to fight it, and not Porter's, after McDowell left him. When McDowell, for good reason, declined to fight then and there, Porter, with a greatly diminished force, was certainly absolved from fighting. We conclude, therefore, that Porter did not violate any order, Pope's or McDowell's, in not fighting.

But when his orders failed to provide for the emergency and he was left to his own discretion, did he err in the exercise of it? I think not, in any particular, but if opinions differ upon that point, I

would suggest one consideration which will go far to extenuate the error. It is, that distrust of the commander is a very important factor in estimating the elements which go to make up the judgment of a subordinate. How can the subordinate intelligently exercise his discretion to carry out the plan of his commander, when he has good reason to think that the commander, himself, has no intelligent plan?

The mistakes in fact, not to mention the numerous errors in principle, which were manifest to Porter during the 28th and 29th of August, were so numerous and so glaring, that they would have destroyed all confidence in Pope's judgment, even if Pope's ridiculous proclamation upon taking command, and the contradictory orders and futile marches for a week past, had not already shaken the faith of the whole army. First, was the urgent night summons to Bristoe, which proved useless, and which was a part of a false movement; next, the order to march to Centerville, when Porter knew there was no enemy near there, and the route would take him far from his proper direction; then, the information that, by Pope's orders, Gainesville had been abandoned, and the way was open for the junction of the rebel forces; then, the countermand of the first order of the morning, which order was far advanced towards fulfillment, and the direction to Porter to retrace his steps for a considerable distance, and march towards Gainesville; then, the errors of fact and of judgment which were contained in the Joint Order. These were:

First. The statement that the corps of Heintzelman, Sigel and Reno were near Gainesville, about ten o'clock when the order was written, whereas Porter knew that those corps were not near Gainesville at

twelve o'clock, and, by reason of Longstreet's arrival, were not likely to be there at all.

Second. The statement, in effect, that Longstreet's force would require from thirty to forty-eight hours to march fifteen miles, which Porter would have known was absurd, even if Longstreet had not then been actually before him. This was such an astounding error on the part of Pope, that it is unaccountable even to this day.

The knowledge that four such mistakes were made in one morning (and more were to come in the afternoon), following two of the day before, was enough to puzzle any officer as to his present duty and the plans of his commander. It was impossible for him, with the best intentions, to know what would subserve the purposes of a commander, whose plans were formed with so little reference to existing facts.

The reasons which induced McDowell to forego an attack with 25,000 men were all the more cogent, indeed were irresistible to Porter, when by McDowell's withdrawal, his force was reduced to 10,000 men or less. In his difficult position he could consider four courses of action :

First. To attack the enemy in his front.

Second. To make a flank march to the right in order to reach the other corps.

Third. To retreat.

Fourth. To remain on the defensive where he was.

We have seen the reasons which he had for not attacking. The woods concealed the enemy's force to a great extent, but Porter's previous knowledge of the presence of a large part, if not the whole, of Longstreet's corps, was confirmed during the afternoon, by frequent reports from officers on the skirmish line.

They saw large bodies of troops, and could hear their movements and the commands of officers. Lieutenant Stevenson estimated that he saw 12,000 to 15,000 men in the enemy's lines, and we know now that he was right. Colonel Marshall said that the enemy's force was double that of Porter's. He saw heavy columns moving into position. For Porter to have attacked without McDowell's co-operation, forces of the enemy presumably and actually superior in numbers to his own, and advantageously posted, ought to have resulted, and undoubtedly would have resulted, in overwhelming defeat. He might, perhaps, have made an attack to see what would come of it, but that would have been anticipating the dreadful errors of Fredericksburg, Spottsylvania Court-house and Cold Harbor. If he began the attack, he could not predict where it was likely to end, or whether or not he would be in a position to retire behind Bull Run that night, as his orders and the famished condition of his men alike dictated. To fight without communication, and so place himself that he *could not* retire behind Bull Run, when he had been ordered to halt with communication, so that he *could* retire behind Bull Run, to fight there if anywhere, would have been as flagrant and criminal a violation of orders, as anything that has been alleged against him.

That his judgment as to the inexpediency of an attack was correct, is confirmed by the concurrent opinions of the most distinguished rebel officers. General Lee says, in a letter to Porter, in 1867: "The result of an attack before 12 M., with 25,000 men, cannot be certainly pronounced; but it ought to have been repulsed if made after his (Longstreet's) troops were formed. The probable result of an attack on

Longstreet, after 12 M., with less than 12,000, would have been a repulse." And again, in 1870: "If a repulse, especially at an early hour, or before 5 P. M., the effect would have been an attack upon General Pope's left and rear by Longstreet and Stuart, which, if successful, would have resulted in the relief of Jackson, and have probably rendered unnecessary the battle of the next day" (August 30th).

General Longstreet, in a letter to Porter, in 1866, says: "We all were particularly anxious to bring on the battle after 12 M., General Lee more so than the rest. If you had attacked any time after 12 M., it seems to me that we surely would have destroyed your army;—that is, if you had attacked with less than 25,000 men."

We have had considerable experience in attacking Lee in his chosen positions, and it has invariably illustrated the maxims of Napoleon, "Not to do any thing which your enemy wishes," * * * and, "Avoid a field of battle which he has reconnoitered and studied."

General Hood writes to Porter in 1874, "* * * An attack made by you, with about 11,000, it seems to me, would have been attended by a repulse, and perhaps great disaster, had time permitted it to have been followed up."

General Wilcox, in 1870, writes: "I should think it almost certain, had you attacked at 11 A. M., with your command such as I supposed it to have been, you would have been repulsed. Had you attacked any time after 2 P. M., I have no doubt you would have been easily and thoroughly repulsed, and had it have been at or near two o'clock, you would have

been used up, and those on your right might have, and probably would have, been overwhelmed, too."

General B. H. Robertson writes, in 1870, "* * * * I should say an attack with 25,000 men would have failed. After twelve o'clock and throughout the day, I believe an attack with 10,000 men would have been utterly disastrous to the Federal forces."

At one time, late in the day, Porter actually began making preparations for an attack in aid of Sigel, and "that," the Board of Officers say, "was the nearest to making a mistake that Porter came that afternoon."

We need no further authority for the conclusion that his decision not to attack the forces in his front was a wise one. What he had reason to believe, and did believe, at the time, we now prove to have been the truth.

Porter could not make a flank march across the country to go to Pope's assistance or effect communication with the other corps, because the distance was two miles, there were no roads, the ground was broken and rocky, very heavily timbered, abounding in hills and hollows and wooded ravines, intersected by many streams, and wholly impracticable for artillery. The only open country was along the front of the rebel lines, exposed to the full fire of their batteries, and attack by their troops. The moment Porter left his position to make the flank march, his column would be helplessly exposed to attack in flank and rear, which the rebel General Robertson says, would have been "perfectly ruinous." General Longstreet testifies that such a movement would have given his forces just the opportunity they were waiting for, "and we should have pushed it with all the vigor that was in us."

Napoleon says : “ Nothing is more rash, or more opposed to the principles of war, than a flank march in presence of an army in position, especially when that army occupies heights, at the foot of which you must defile.”

Porter could not retire and take the Sudley Springs road which McDowell had taken, because that was filled with McDowell's troops, King's and Ricketts' divisions, 15,000 men, marching up all the afternoon. Besides, Porter's remaining in position was undoubtedly what made that road safe for McDowell's march.

Porter could not *retreat* entirely, in the face of a vigilant and numerous foe, for that would have been to invite destruction for himself and McDowell, as well as for the rest of Pope's army. Besides, he cannot be blamed for *not* retreating, for it was one of the charges against him, that *he did retreat*, and it was a capital offense, and the Court-martial found him guilty of it, although there was not a word of truth in it. It is difficult to see what they would have found if it had been really true ; but he saved them from that embarrassment, by not retreating at all.

He finally decided to remain where he was until he could receive further intelligence or instructions. He prepared for a plucky and obstinate defense in the strong position which he held. There he remained until the next morning, when he was ordered away by Pope. During the afternoon, he sent two written messages to Pope (neither of which would Pope produce), stating his situation ; and at least four such messages to McDowell or Pope, whichever could be first found ; but McDowell, not being where it was expected he would be, could not readily be found, and was finally reached when he was with Pope.

Porter could not have known that a severe action of great consequence was being fought, and that his aid was greatly needed, or believed that General Pope's troops were being defeated; because there was no such action, and nothing to give rise to such a belief. There was no time in the afternoon, after Porter reached his position, when more than 5,000 troops were engaged at once. With the exception of an attack by a brigade or two, there was nothing but cannonading, which the army had heard all the way from the Rappahannock, to indicate that any enemy was in their vicinity. At the very time when, according to Pope's opinion, Porter ought to have attacked, Pope himself rode upon the field and stopped the fighting. It was not until nearly night, too late to effect anything, that any musketry firing was heard in Porter's position.

Porter could not see the field of battle at the right, on account of the intervening woods and hills, nor could he hear anything but the artillery firing, which, as General Morell said, did not sound like a battle. Therefore Porter did not believe that Pope's army was being defeated, nor that the aid of his corps was greatly needed.

There was no such thing as a general engagement, or a "battle raging at the right," that day, despite Pope's assertion that he fought a "terrific battle with the *combined forces* of the enemy, which lasted with *continuous fury* from daylight until after dark." Pope's attacks were so weak and ill-supported that they could not possibly have been successful. General Schurz says in his report: "The troops were frittered away in isolated efforts."

Porter could do little after McDowell left him, but what he did, was a service which Pope would never acknowledge, but for which he ought to have been profoundly grateful. Porter detained in his front the greater part of Longstreet's corps, to hold him in check; and prevented the concentration upon Pope's left, which caused the defeat of the next day. We have General Lee's authority for saying that, but for Porter's presence, the terrible disaster which happened on the 30th of August would have occurred on the 29th. If so, it would have been fatal to Pope's army, for night was all that saved the Federals on the 30th; and the attack if made the day before, would have begun much earlier, and Pope would have been a day's march farther from his reënforcements.

Chantilly would have been unnecessary, and Antietam perhaps impossible.

But nothing could save Pope. The operations of his mind, and the disposition of his forces, were alike so faulty, that his defeat was merely a question of time.

His ideas, and, unfortunately, many of his statements were too little in harmony with the environment.

THE TIME OF LONGSTREET'S ARRIVAL.

The time of Longstreet's arrival upon the field, on the 29th of August, is now so conclusively settled, that it seems curious it should ever have been a matter of dispute. Yet all the enemies of Porter have strenuously denied that Longstreet's corps, or any large force of the enemy was before him that day; and Pope has defended that false position with all the heaviest artillery of misrepresentation.

Porter claimed before the Court-martial, and proved the fact beyond a reasonable doubt to any body of men who were not seeking an excuse for condemning him, that the large part of the rebel army known as Longstreet's corps, was confronting him. This question is the one upon which any estimate of Porter's conduct must chiefly depend. Porter had good reason at the time to believe that Longstreet was before him; he did believe so, in common with all his officers who had opportunity for observation; McDowell believed so; every one who knew anything about it believed so, except Pope, and he professes not to believe it to this day. If Longstreet actually *was* present, then are both the judgment and conduct of Porter justified; for in that case, all of Pope's plans and orders were so at variance with existing facts, that literal obedience was impossible, and discretion could rest only upon general military knowledge.

The question is settled,

First. By the probabilities of the case.

Second. By direct and overwhelming testimony.

The Probabilities.

We know, as Porter and Pope knew, that Lee, with Longstreet's corps, reached Thoroughfare Gap soon after noon of August 28th. A part of his force had passed the Gap, and was driven back by the advance of Ricketts. It may be supposed that Lee was anxious to reach Jackson, knowing that the small force of the latter was exposed to the whole Federal army. He took measures at once, to dislodge Ricketts, which he soon succeeded in doing. At least

three of his divisions encamped that night on the east side of the Gap. From the Gap to Gainesville is six miles and a half; from Gainesville to the extremity of Jackson's line, was about three miles, and from Gainesville to Dawkins Branch, where Porter stopped, was about three miles, with a good road all the way. Lee's line was about a mile in front of Porter, so that, from daylight, Lee would have about seven hours and a half in which to march eight miles and a half, and arrive at his position near Dawkins Branch, at the same time as Porter. At daylight was heard the engagement of Sigel's corps with Jackson, and it is certain that officers and men of Lee's force would not be slow in marching towards the sound of the cannon. With no reason for delay, and every reason for speed, it would be incredible if Lee did not reach his position in much less time than what we have allowed him. We know that he did arrive there in ample time, by

Direct and Overwhelming Testimony.

Longstreet says, in his report: "The march was quickened to the extent of our capacity." He testifies that they moved in the gray of the morning, about four o'clock. After hearing the artillery, they increased their speed to three miles an hour. General Wilcox started at sunrise from Hopewell Gap, and moved rapidly—"too rapidly." He reached the junction of the roads, and found Longstreet's troops going by. Major Williams, aid-de-camp to General Jones, testifies that they made the march "as rapidly as it could be made." General Buford saw what he estimated to be over 14,000 men (more than half of Longstreet's force then present), go through Gainesville, at a

quarter before nine o'clock. So much for the rapidity of the march.

As to the time of arrival—besides the indirect evidence derived from the citations which we have given before in reference to an attack—General Lee says: “Longstreet’s command arrived within supporting distance of Jackson on 29th August, ’62, between 9 and 10 A. M. General Longstreet’s command was formed by 12 M., August 29th, in two lines on Jackson’s right.” And again: “I was there then; I saw Porter approach. I went out and reconnoitered his corps, and made proper dispositions to meet it.”

General Longstreet says: “My command (25,000 in round numbers) was within supporting distance of General Jackson at 9 A. M., August 29th, having passed Thoroughfare Gap at early dawn. My command was deployed in double line for attack between 10 A. M. and 12 M. on the 29th, extending from Jackson’s right across turnpike and Manassas Gap R. R. My command was ready to receive any attack after 11 o’clock A. M.” He testifies before the Board of Officers: “I think they had been deployed by eleven o’clock in the day.”

In addition to that convincing testimony, we have the statements, either in reports, letters, or testimony, of the rebel Generals Robertson, D. R. Jones, Early, Hood, Wilcox, Colonel Marshall, aid-de-camp of General Lee, Major Williams, aid-de-camp of General Jones, and Lieutenant W. M. Owen, Adjutant of the Washington Artillery, all to the effect that the arrival and formation of Longstreet’s corps occurred between 10 and 12 o’clock that morning. General Beverly Robertson says: “My videttes had reported your

(Porter's) approach, and Longstreet's forces to meet yours were mainly posted before your arrival. Had you continued your march, or attacked at any time, you would have struck Longstreet's line of battle, over 25,000 strong."

It is idle to say that the fallibility of human memory discredits witnesses so intelligent, so numerous and so reputable, whose testimony is positive and harmonious. The event which those officers describe was one in which they personally took part; it was of great importance, and therefore likely to fix the attention; the hour of noon is one which naturally attracts notice; the start from the Gap at sunrise, within hearing of the distant cannonade, gave them a definite point from which to estimate time and distance; and further, the memory could be refreshed, if doubtful, by reference to their own contemporaneous orders, reports and memoranda. Buford saw half of Longstreet's force, before nine o'clock, *within three miles* of the position afterwards taken by Porter. Why should not that half have arrived within one mile of that position by half-past eleven, and why should not that part have been followed by the rest? We know with all the certainty which can exist in human affairs, that Longstreet's force was present just as Porter believed and alleged that it was.

It is absurd to attempt to combat such evidence, by other evidence equally depending upon the fallibility of memory, and based upon Stuart's vainglorious report, or any other work of fiction. Stuart's report was written six months after the events it erroneously describes. From that report, one would judge Stuart's movements to have been very important; whereas in

fact, his whole conduct on the field was that of a busy-body. He did little useful service; but by ordering troops away from places where they were needed, and into places where they were not needed, he nearly marred the plans of his superiors. He and Rosser may have amused themselves by ordering their command to tie brush to their horses' tails, and drag it along the road in order to raise a dust—as a story, “that is magnificent, but it is not war”—but whether they did so or not, they did not deceive anybody, for Longstreet was there, and there was nothing for anybody to be deceived about. Other enemies of Porter, with less candor in the avowal and more harm in the result, have been ever since “raising a dust” to conceal the true time of Longstreet's arrival.

But as they are consciously weak in their theory of time, they endeavor to bolster their hopeless cause by another theory in respect to place. They plead a confession and avoidance. They maintain, that even if Longstreet did arrive anywhere near the time when he thinks he did, his troops were not placed where he and Lee and other prominent officers think they were. They try to prove by the testimony of citizens and chaplains, that the rebel lines were west of Page Land Lane, a mile or more back of their actual position. That when those lines were arranged by Lee in person, with special reference to Porter's presence, they were not placed where they could do Porter any harm, or interfere at all with his movements. We have neither time nor space in which to argue against such “preposterous conclusions.” Nor is it necessary. Lee with Longstreet was in Porter's front, whether near this or that citizen's house, is not material; he

reached his position before Porter came up; he had the choice of the country, and doubtless took the position he wanted to take; he arranged his lines in person, with special reference to Porter. I have sufficient faith in Lee's military judgment, to believe, that the position chosen was the most commanding and best for *all purposes*, which the vicinity afforded; that when Lee saw Porter approach, and disposed his troops to meet him, those troops were placed where they would be most effective.

Lee, Longstreet and others identify on maps the place where they were, and describe the formation of their lines. Their opinions substantially agree with Porter's. Colonel Marshall, Lee's aid-de-camp, found and identified the position of the troops he visited, and the tree which he climbed near Lee's head-quarters; and if Lee's statement of the position of his line is not correct, and Marshall is worthy of belief, Lee's head-quarters must have been far in advance of his first line.

General Lee personally arranged his lines; and when he says that he saw Porter approach, and made dispositions to meet him, I believe it; and I should believe that Lee knew what he saw, and knew where his troops were placed, and that they were most advantageously posted, if all the citizens in the county and all the chaplains in the Confederacy should gainsay it. Besides, we know where Porter was, and we know from the testimony of his officers, that the woods in front of them were full of hostile skirmishers; and large bodies of troops, estimated at from 12,000 to 15,000, were seen on the hills beyond. Heroic men crawled towards the rebel lines, where discovery was

death, and heard the movement of troops, and the commands of officers.

We have seen that Porter had good reason to believe that Longstreet was before him in strong force; he did believe so, and it was the truth. The contingency was not provided for by his orders. He was in a difficult and dangerous situation, and had nothing to guide him but his own judgment and military knowledge. These he used, as we now know, loyally and wisely. He remained on the defensive during the afternoon, with little molestation. His conduct thus far was neither "disobedient" nor "shameful."

But at night a new difficulty arose from the receipt of what is known as

THE "4.30 P. M. ORDER."

The order reads as follows:

HEAD-QUARTERS IN THE FIELD,
August 29, 1862 (4.30 P. M.)

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General commanding.
Major-General PORTER.

This order, even if it had been possible of execution at all, was not delivered to Porter until sundown, too late to execute it. Five witnesses of unimpeachable character, before the Court-martial, swore positively to this fact. The Court chose to believe the conjectures of Douglas Pope, in preference to the convincing testimony of the opposing witnesses. I will not characterize Captain Pope's testimony, or that of his orderly. It bears its refutation upon its face, and subsequent disclosures in the record, conclusively establish its character.

The flank and rear which Pope intended should be attacked, were of course Jackson's. But therein he added another to the many errors of that day. Porter's line of march did not bring him in upon the enemy's flank, either right or left. It brought him directly upon Longstreet's front, where 25,000 men were ready to receive him. Jackson's flank was three miles away from him, across an impracticable country, and the only way to reach it would have been either by a flank march along the whole length of Longstreet's line, or by the defeat of his overwhelming forces. This at sunset, with 10,000 men against 25,000, would have been a sufficiently serious undertaking.

The next mistake on the part of Pope, was the direction to Porter to keep his right in communication with Reynolds. The latter was at least two miles from Porter, with the same impassable country between them. Porter could not connect with Reynolds, and there was no flank or rear of any enemy that could be attacked. Longstreet outflanked Porter, and Jackson was too far off and too well defended.

On this point General Lee says: "Porter could not take Jackson in flank while he was attacked in front. He could do nothing of that sort. * * * * We flanked him. He could not flank Jackson. I suppose *we should have cut Porter to pieces if he had attacked to get at Jackson's flank.*"

Porter was convicted for not attacking in front, under an order to attack in flank. The order was not received in time for any thing; but because the Court erroneously supposed that it was received in time to attack the enemy directly in front, it therefore concluded that Porter was guilty for not attacking an enemy three miles away in flank. By such contradictions did the Court seek to appease popular passion, and propitiate the Powers that be.

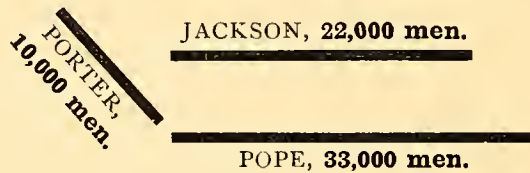
To have reached Jackson's flank as intended by the order, and prepared for action, would have required at least two hours, even if no enemy had been opposing. The whole order was a mistake, and Porter knew it then, as well as we know it now.

However, late as it was, he sent to Morell the order to attack, and himself rode to the front to direct the movement. All the officers there, who had been watching the enemy during the whole afternoon, Morell included, remonstrated against the attack. Even that gallant veteran, Colonel Marshall, who had risked his life that day by crawling close up to the rebel pickets, who was wounded almost to death at Fredericksburg, who never flinched from an enemy whom he could see; even he, said that it would be certain destruction to attack, and he did not wish to go into that timber.

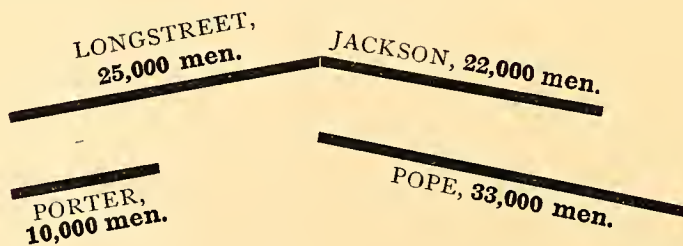
In view of all these circumstances, Porter very properly recalled the order. To have done otherwise would have been little better than useless murder. He would not have been justified in attacking even by daylight, with the knowledge that he had, which he knew his commander had not. The order was based upon premises wholly false. Pope still labored under the hallucination, which lasted far into the following day, that he was fighting Jackson alone, and that Jackson was anxious to retreat. Hence all his dispositions were erroneous.

The situation on the 29th of August may be represented approximately thus :

What Pope assumed it to be—*



What it actually was—



It will be seen at a glance how erroneous Pope's ideas were, how difficult was Porter's position, and how impossible of execution was the "4.30 Order."

* NOTE TO SECOND EDITION.—General Grant has publicly given me credit for the assistance afforded by this work, in the preparation of his article in the *North American Review* for December, 1882.

It has been held by Pope and by the Judge-Advocate of the Court-martial, that Porter should have attacked whatever force was in his front :—Pope says : “ Whether there were 5,000 or 50,000 of the enemy ;” even if “ the whole Southern Confederacy was in front of him.” And this, to obey an order to attack in flank and rear a supposed small detachment already outnumbered ! This proposition is hardly worthy of discussion. But for fear some one may be misled by it, I will give it a moment’s consideration. Napoleon’s maxim already quoted in regard to passive obedience, is the best guide in forming our judgment.

Where an officer receives an order from his commander who is personally present and cognizant of the situation, it is undoubtedly his duty to obey, however dangerous or even reckless or mistaken the undertaking may appear to him ; for he cannot know but it may be a part of a general plan which requires his sacrifice for some great and compensating advantage. The same is true when the subordinate is at a distance, and the commander gives the order, with a full knowledge of the circumstances, or repeats it after he has received information of them. This last was the case with Hooker at Fredericksburg, and Porter on the 30th of August. Hooker was ordered by Burnside to make an attack which was ill-judged and hopeless. He left his command, sought Burnside, and remonstrated against such a desperate movement. The order was repeated, and Hooker attacked. He says with grim humor, in speaking of the result : “ Finding that I had lost as many men as my orders required me to lose, I suspended the attack.”

On the 30th of August, Pope believed the enemy were in retreat. Porter and the other officers at the

front knew better. They recaptured a Union soldier who confirmed the report of a retreat. Porter sent him to Pope, remarking that he believed either that the soldier was a fool, or that he was released on purpose to create a wrong impression. The message came back : " General Pope believes that soldier, and directs you to attack." And Porter did attack splendidly, and was repulsed, and lost quite as many men as *his orders required him to lose*. Wherever it was possible for Pope to make a mistake he made one.

When it was Porter's duty to obey, he did not hesitate ; but under the 4.30 Order there was no duty which he could fulfill. The order required an impossibility, and based the requirement upon two vital errors. It showed on its face that Pope had no accurate knowledge of the situation—that he was hopelessly mistaken. To declare that Porter should have uselessly sacrificed men under such circumstances, is simply monstrous.

Porter withdrew his forces as ordered, early in the morning of the 30th, and rejoined Pope near Groveton. We shall presently see whether his action on that day was disobedient or shameful.

THE ANIMUS.

An attempt was made to prejudice the mind of the Court-martial, and subsequently that of the President, by means which seem to the writer wholly unfair and improper. When Porter left General Burnside's command to join Pope, Burnside requested him to send information from time to time, of affairs at the front. This Porter did in a series of dispatches designed

merely for Burnside's personal perusal. The dispatches were mainly an account of military movements, and in that respect were unobjectionable. But there was an occasional sentence, written with the freedom which one friend would use in writing to another, which referred somewhat disrespectfully to Pope and his strategy. Here are the worst of those allusions:

"The strategy is magnificent, and tactics in the inverse proportion."

"It would seem from proper statements of the enemy, that he was wandering around loose; but I expect they know what they are doing, which is more than any one here or any where knows."

"All that talk about bagging Jackson, etc., was bosh. That enormous gap, Manassas, was left open, and the enemy jumped through; and the story of McDowell having cut off Longstreet, had no good foundation. * * * I expect the next thing will be a raid on our rear by Longstreet who was cut off."

Those passages certainly do not indicate any great depth of depravity. Burnside testified that he saw no harm in the dispatches, and he sent them to the President. Mr. Lincoln saw no harm in them, or if he did, he made himself a party to their wickedness, for he expressed himself *as glad to get them, and personally thanked Porter for them, on the battle-field of Antietam.* He said they gave him the only true account of events that he could get at the time.

But when the prosecution could not make out a case against Porter by the evidence of his *acts*, they sought to eke out their scanty proof by alleged evidence of his *thoughts*. They used these dispatches, as Judge-Advocate Holt avowed, for the purpose of "determining

points *otherwise left doubtful by the evidence.*" In other words, when it could not be shown from the evidence, that Porter's acts were wrong, it was sought to prove that they must be so, because his thoughts were wrong. An erroneous idea of what he would be likely to do, was used as evidence to prove what he did. To such a ridiculous extent was this method carried, that Lieutenant-Colonel T. C. H. Smith testified that he had never seen Porter before, but from his manner and tone, he (Smith) knew Porter would fail Pope. Smith was the great mind-reader for the prosecution. He further says that, but for fear of the law, he would have murdered Porter at that time, merely on account of his looks! That is some of the testimony by which Porter was convicted.

The attempt was made to prove that Porter's animus towards Pope was evil, therefore his whole conduct would be evil. Acts which would have been considered innocent and unavoidable in the case of another, were distorted into high crimes in the case of Porter, because forsooth, he did not speak reverently of Pope's ridiculous proclamation and futile strategy. Such a course of proceeding was wholly wrong both in principle and in fact. In principle, because, when the acts which a man did are the subject of inquiry, they cannot be proved by showing what he might be thought likely to do. It would be as reasonable to convict a man of murder because he hated his enemy, and therefore might be thought likely to wish him dead, when the sole question was—and it was a point left doubtful by the evidence—whether that enemy had been killed by anybody, or was dead at all.

The questions which the Court was investigating were, not what did Porter think, and what action would such thoughts be likely to lead to ; but, first, what did he do ? and second, was that action reasonable and right under the circumstances ? His opinion of Pope, or his feelings towards Pope, have nothing to do with the case, until it is NOT left doubtful by the evidence that he failed in his duty. No one pretends that he served Pope from love of him—few officers did. The sole question is, did he dutifully serve him ? Did he fulfill his orders as it was reasonable to understand them, and as far as it was possible to execute them ? If it is not evident that he did so, then I have not adequately set forth the true conclusions from the record. If he did so, then his motives or his thoughts are of no consequence.

The method of proof was wrong in fact, because the dispatches were represented to mean what they did not mean.

They do not express any wish for Pope to fail, much less any intention to betray him. They indicate a *fear* that he will fail ; and that fear was abundantly warranted by the facts, and completely vindicated by the result. The whole trouble with the dispatches was, not that they were false, but that they were true. No intention to fail Pope can be properly inferred from them, even if they show contempt for him and his strategy. The case is very different from that of a quarrel between private persons, where only personal feelings and personal interests are involved. In this case great national interests were at stake, and far more important considerations than personal spite, would influence Porter's conduct. For Porter to fail

Pope meant more than to gratify a personal resentment. It meant to fail in conduct as a soldier; to forfeit the reputation of a lifetime of duty and of brilliant success; to give up the hope of future distinction and advancement. It meant to inhumanly sacrifice the lives of men, for whose welfare he was almost unduly solicitous; and finally, to imperil the safety of the Capital, and the existence of the nation for whose well-being he had received wounds in one war, and risked death in two. All this was the evident effect of failing Pope. Can it be supposed that Porter would risk all this, because he playfully reflected upon Pope's ridiculous strategy? Can it be supposed that, in consequence of a petty spite, for the remote chance of ruining Pope, he would endanger the Capital and take the imminent chance of ruining his country? And this, too, with the certainty that his honor, if not his life, would pay the penalty? There are many higher motives than love for Pope to induce an officer to do his duty, even under Pope's command. Therefore I say, that, until it is proved that Porter was out and out a traitor to his country, and lost to all sense not only of humanity but of self-interest, it cannot be argued that contempt for Pope would lead to a failure of duty under Pope. For this reason the use of expressions derogatory to Pope was improper for the purpose of proving acts hostile to the nation. It is preposterous to argue anything as to Porter's acts, from his dislike of Pope, until it is shown that all good motives and all self-interest were absent; or else that love for Pope is the highest and most potent influence that can "spring eternal in the human breast."

And further, we have no right to argue as to any motive to explain Porter's acts, until we prove beyond

a reasonable doubt that his acts were so faulty as to require such explanation. Not till then does the question of animus arise, to determine whether those acts were the result of willfulness or weakness. If what was required of him was impossible or unreasonable, what he thought of Pope does not affect the character of the requirement, or the action which should have been taken under the circumstances. Therefore, it was not proper to supplement the proof of points left doubtful by the evidence, by dispatches which could not in any way prove the facts claimed to be proved by them, even if they showed the animus claimed to be shown by them.

But the so-called evidence of animus availed to bridge all the gaps between the allegations and the proof. It was an operation of Porter's mind that could make possible a march in three hours, which was impossible in six; that could make the fact of a retreat, when there was no retreat; that could make a battle of great consequence, when there was no such battle; that could make an order to fight out of an order to retire; that could cause an order to be delivered at five o'clock, which was not delivered until seven; that could make Longstreet absent, when he was present; that could make possible an attack upon Jackson's flank, when the only possibility was an attack upon Longstreet's front; that could have insured the capture of Jackson's army, when Jackson ran no risk of capture. It is claiming a good deal to say, even from the evidence for the prosecution, that these points attained the respectability of being doubtful. Yet Porter's animus supplied all deficiencies. Other officers might be longer on the march, under fewer

difficulties than those which Porter overcame. *Their* conduct was energetic and exemplary. But it was Porter's animus that detained him, not the darkness nor the 2,000 wagons.

After all Porter's action, his "shameful disobedience" and "cowardice," and even the dreadful animus of these dispatches, were known to the Government, they still had so much faith in his capacity and integrity that they put him in command of 25,000 men, for the defense of the Capital which he had so "willfully" and "shamefully" endangered.

Pope himself, when he knew all about Porter's acts, told him that he was satisfied with them, except in one trivial and unimportant particular. But that was before he was aware of the animus. When he saw the criticisms upon his *strategy*, his "*eyes were opened.*" Then he saw how heinous had been the conduct which he had before, with full knowledge, approved. He forthwith commenced that series of "indefensible and indecent" proceedings which culminated in the Court-martial.

ERRORS OF THE COURT-MARTIAL.

The Court-martial which convicted Porter, has been very tenderly dealt with in the record of the Board of Officers; that is, if complete reversal of its opinions, and the exhibition of numerous errors which it committed, are consistent with tender treatment. The Board very truly say: "These charges and specifications certainly bear no discernible resemblance to the facts of the case as now established."

But in a critical study of the evidence presented to the Court, it is difficult to see how, with honesty and

intelligence, it could have made so many mistakes. It is to be regretted that the oath of secrecy prevents the disclosure of the vote by which its conclusions were reached. But for that, we might discriminate between the majority and the minority, if there was any such division. However, I should suppose that a member of the minority would be willing to bear his share of the odium, for the privilege of having cast his vote in protest against so great a wrong.

The Court derives no authority from its personality. It consisted of nine officers of high rank, it is true; but rank affords no sanction where acts are contrary to justice and common sense. "By their fruits ye shall know them," not by their rank. Besides, we have as much right to argue that the decision was reached by a bare majority, and was therefore virtually the opinion of one man, as an opponent would have to claim the authority of nine men.

In reviewing the testimony, it is impossible to understand the system upon which the Court estimated the credibility of witnesses, or the value of evidence. It seems as if every conjecture for the prosecution, by whomsoever advanced, outweighed every fact for the defense. The verdict was certainly not fairly derived from the evidence, and in some instances, as that of a retreat, was not derived from the evidence at all. It is necessary to look for some influence outside of the case to account for such strained conclusions. We need not seek for a cause beyond the wild passions of the time, the popular belief that treason was rife and an example must be made, the clamor of the multitude, the same unthinking ferocity that, with the cry, "Crucify him, crucify him!" led even a Roman governor to deliver to the sacrifice an innocent victim.

But, besides this cause, there was, perhaps, a specific reason for the action of the Court-martial. That was the great desire, if not the great need of the Administration to secure a conviction.

General McClellan had been set aside by Stanton and Halleck, who were personally and politically hostile to him. General Pope was put in his place, and held out as the champion who was to show the world how wrong McClellan had been, and how wise was the cabal which had overthrown him. Pope had begun his campaign in the character of *Bombastes Furioso*. He had issued a proclamation which has ever since been a source of shame to his friends, and delight to his enemies. The purposes of this proclamation were to fire the popular heart, and reflect upon McClellan. Therefore, when on the 2d of September, after Pope's dismal failure, the cabal was obliged to call McClellan again to the command, in order to save the Capital and the nation, the Administration was placed in an awkward and humiliating position. Something must be done to restore the reputation of the Government which had made such a grievous and ridiculous blunder as that which the appointment of Pope proved to be. The next elections might be fatal to the party in power, unless its agents could shift from themselves the responsibility for the late disasters. How could that be done better than by showing that Pope's defeat was due not to the incompetence of Pope himself, but to the negligence and insubordination of his officers? And how could a more conspicuous example be made than by selecting Fitz-John Porter as the victim? His conviction would exonerate Pope, save the Administration, punish McClellan indirectly, and terrify McClellan's

other friends. It was a large stake to play for, and it was won.

The members of the Court were appointed by General Halleck, one of the cabal, instead of by the good President, who was often the dupe of the cabal. If the Court did not do the bidding of its masters, then there is no intelligible reason for its false findings. Then the promotions of Judges and witnesses for the prosecution, which followed almost immediately after the conviction of Porter, are the most remarkable coincidences in history. If those promotions were not a return for value received from the verdict of the Court, the time when they were given indicates exceedingly bad taste on the part of the authorities.

Let us summarize the serious errors of the Court.

In respect to the events of the 29th of August, it decided against Porter, contrary not only to the preponderance of evidence, but contrary to all the competent and credible evidence upon every point. The conviction was principally based upon the testimony of four witnesses who confessedly swore only upon conjecture, as against the incontrovertible testimony of many witnesses who swore positively as to facts within their own knowledge.

The Court committed great error in regard,

1. To the position of Porter.
2. To the numbers and position of the enemy.
3. To the significance of the Joint Order.
4. To the time of the receipt of the "4.30 Order."
5. To the attack upon Jackson's flank and rear.
6. To the battle raging at the right.
7. To the retreat.

No witness for the prosecution pretended to have any ground but guess-work, upon which to base his idea of where Porter was, or where the enemy was. Even McDowell, who was with Porter for a time, placed him a mile in advance of his real position; and before the Board of Officers admitted his error. The other witnesses knew nothing of where he was, but supposed him to be about the place indicated by McDowell. The maps before the Court were wholly wrong.

2d. The Court ignored the presence of Longstreet, and even the significance of Buford's dispatch, and Buford's positive testimony as to what he actually saw.

3d. The Joint Order was interpreted as an order to fight, when it was really an order to halt and retire. This error doubtless arose from the supposed order by McDowell to fight, which impression was also an error.

4th. The error regarding the time of delivery of the "4.30 Order," arose from the worthless testimony of Captain Pope and his orderly; testimony which would not have received credit in a Police Court, in a case which involved the penalty of one dollar. Their testimony was conjectural, and they were directly contradicted by five unimpeachable witnesses. The admissions afterwards made by Captain Pope, in moments of confidence or weakness, that he lost his way, and did not arrive till late, sufficiently show the value of his testimony.

Before the Board of Officers, Major Randol corroborated the testimony of the five witnesses before the Court-martial, as to the arrival of Captain Pope about dark. Further, the intrinsic evidence of dispatches

produced before the Board shows that Captain Pope did not arrive with the 4.30 Order within an hour at least of the time when he swore he did. The members of the Court-martial ought never to have believed him at all. In that case they would have had fewer errors to repent of now.

Because the Court erroneously believed that the order was received in time to attack the enemy whom Porter claimed to be in front, they wrongly assumed that it was received in time for an attack upon Jackson's flank, three miles away.

5th. Ignoring the presence of Longstreet, and putting Porter a mile ahead of his true position, with no enemy in his front, produced the error in regard to the possibility of an attack upon Jackson's flank and rear; and because Porter did not attack overwhelming forces in front, the Court convicted him of not attacking weak forces in flank.

6th. The battle raging at the right was a myth and a sham. As we have seen, there was no such battle, and no severe action of great consequence requiring Porter's aid, at any time after Porter reached his position. Pope, without Porter, outnumbered Jackson, if Longstreet was not there, by fully 10,000 men, before McDowell's arrival on the field, and afterwards by 25,000. This shows the absurdity of the pretense that Porter's aid was needed, because Pope was fighting "greatly superior numbers." He was scarcely fighting at all, and the numbers were far inferior, unless Longstreet was present, as Porter claimed.

Another absurdity closely connected with this, is the statement that Jackson's capture would have resulted if

Porter had done his duty. We can readily estimate the chances of Jackson's capture, under the *bagging* process as practiced by Pope. Jackson had been within five miles of Pope for nearly two days, and the latter knew no more of actual truth about him, than if he had been living in another planet. It was Pope's good luck, or rather the stubborn fighting of his troops, that alone prevented Jackson from capturing him.

7th. The Court found the fact of a shameful retreat, when there was no retreat whatever, and no evidence of any; and when in fact the evidence was positive that there was *no* retreat.

I think these errors are sufficient to invalidate the judgment of any court, no matter how respectable its members, or how high their rank. Most of the errors could easily have been avoided, and ought to have been avoided, when it is considered that in order to convict, guilt must be proved beyond a reasonable doubt. There was no one of the accusations against Porter, in respect to which his innocence was not proved beyond a reasonable doubt. We cannot escape the conclusion that the Court-martial was organized to convict, and its proceedings were a mockery of justice.

Many of the rulings of the Court were grossly erroneous and unfair. They were so consistently, so monotonously against the accused, that they would really be amusing if their consequences had not been so serious.

The composition of the Court was not favorable to an impartial hearing. The law requires that where a commander of an army prefers charges against an officer under his command, the Court shall be convened

by the President. Pope first made the charges against Porter before a military commission. This being too manifestly illegal, the commission was dissolved, and this Court-martial was convened by General Halleck. Then the technicality was resorted to, of having the charges made by an officer of Pope's staff, instead of Pope himself. The law was not designed to permit any such miserable subterfuge as that, especially in a capital case. When it suited Pope's purposes to deny having anything to do with the charges, he did so; but at other times he claimed the merit of them, and confessed that he had asked the President for his reward.

Porter protested against the mode of convening the Court, but it is true he did not protest against any of the members :

1st. Because he felt so confident of the merits of his defense, that he thought it could not fail before any court.

2d. Because the order which convened the Court, told him, that "no other officers than these named, can be assembled without manifest injury to the service."

He had, therefore, no choice but to accept the Court as it was, and he would have been most unwise to have made complaint.

The Court should have consisted of thirteen members instead of nine, and the rank of all should have been as high as that of the defendant; whereas only two were of the proper rank. Despite General Halleck's certification that "no other officers than these named can be assembled without manifest injury to the service," he actually made one substitution, and offered to make another. In fact, he could have found

a full complement of officers, in numbers at least, if not in rank. Halleck's statement was merely another subterfuge, in order to get a court which would produce the desired result.

But we can afford to waive all narrow and technical considerations, and rest our unqualified condemnation of the Court-martial, upon the broad ground of its arbitrary and prejudiced proceedings, its erroneous inventions, and its inexcusably false conclusions.

Two members of the Court, Generals King and Ricketts, were concerned in the very movements which were in question, and both had made a retreat which has been mildly characterized as "uncalled for and unmilitary."* It would be supposed, considering the consequences of their retreat, that *their* conduct would have been inquired into before that of Porter. It was liable to inquiry at any time, unless some other victim should satisfy Pope, the Administration and the public. I do not allege that those officers were influenced by that consideration, and for all we know they may have voted in Porter's favor; but, being human, although both were estimable men, they were not proper judges in Porter's case. One of them, King, descended from the bench to contradict an important witness for the defense, and then returned to his seat, presumably to estimate the value of the testimony; and that, too, when the accused person was on trial for his life.

The sentence imposed by the Court-martial was not commensurate with the offense. Porter was condemned "to be cashiered, and to be forever disqualified from holding any office of trust or profit under

*John C. Ropes. "The Army under Pope," page 81.

the Government of the United States." That was an infliction sufficiently severe, when applied to an innocent man; but if Porter was guilty, as the Court declared, he ought certainly to have been shot or hung. A milder sentence for such heinous crimes, shows either that the decision was reached by a bare majority of the Judges, not enough for a death sentence, or else, that they were distrustful of their own verdict. There was certainly no mercy to be expected from them. While depriving Porter of reputation, rank and pay, they spared his life, as I believe, not from mercy, but from, perhaps, a consciousness, that if he were ever vindicated, as he has recently been, a judicial robbery would be less awkward for all concerned than a judicial murder.

LINCOLN'S APPROVAL.

We come now to the saddest part of this whole sad business, that which relates to President Lincoln's action. Lincoln was too just to have approved that sentence, if he had known the true character of the evidence. Not having time to read the voluminous reports of the trial, he requested Judge-Advocate-General Holt "to revise the proceedings of the Court-martial, * * * and to report fully upon any legal questions that may have arisen in them, and upon the bearing of the testimony in reference to the charges and specifications exhibited against the accused, and upon which he was tried."

Lincoln wanted a full and fair statement of the case. Holt did not neglect his opportunity. He had declined to argue the case before the Court-martial; but, before Mr. Lincoln, the defense could make no reply. He

presented a review which pretended to be such as the President had asked for, but which, in reality, was an argument by an advocate for the prosecution, and a very unfair, mean and bitter argument at that. Mr. Lincoln fell into the trap, and, relying upon Holt's statements, approved the sentence of the Court. The great-hearted, just-minded, and confiding President was no match for the subtle and malicious schemers by whom he was surrounded. It is not too much to say that Lincoln's approval of that sentence was obtained by willfully false pretenses.

Mr. Lincoln probably continued to the day of his death in the belief that Porter had disgracefully retreated. The testimony before the Board of Officers of the President's son, Mr. Robert T. Lincoln, gives us good reason for believing that this one so-called fact of a retreat, which was really the only *fact* that had not a particle of evidence, good or bad, to sustain it, was a potent cause, if not the chief cause, of the President's approval.

The President afterwards expressed his willingness to give the case a rehearing, and his hope for Porter's vindication. He met his tragic death before Porter's appeal was fully prepared. The great and good Lincoln, had he lived and learned the truth, would have been swift to undo the cruel injustice which he had been deceived into doing, and to rebuke the wickedness which led to it.

PORTER'S CONDUCT, AUGUST 30TH.

No estimate of Porter's conduct is complete without a consideration of his services on the 30th of August, the day following his alleged shameful behavior.

His motives all through these events were called in question before the Court-martial, and he was not allowed to introduce evidence of his conduct on the 30th, to show the falsehood of the accusation. There was an additional specification under the second general charge, alleging Porter's misconduct and feebleness in attack on that day. Now it happened that his action was particularly gallant and efficient that day, and he could prove it so. Such proof would go far to refute the charge of indifference and insubordination, that is, the evil animus, on which the Government especially relied to make out its case. The Judge-Advocate promptly dismissed the accusation, at the opening of the Court; and consequently the accused was not permitted to introduce evidence of his good conduct on that day, to offset the alleged proofs of evil intent derived from previous days. If that result was in contemplation of the Judge-Advocate when he dismissed the accusation, such action, even in so eminent a politician as Colonel Holt, was but little above a very low degree of pettifogging.

It is not credible that an officer whose whole life had been brilliant and honorable, should be a poltroon one day and a hero the next, simply because he did not like General Pope. Such an emotion would not produce conduct so eccentric.

Porter's noble service on the 30th of August, has been appropriated by Pope to himself on the 29th. The latter published Jackson's report of operations on the 30th, which included Porter's attack, under the representation that it applied to the attacks of the 29th, under Pope's direction. In other words, by a transposition of dates, he used Porter's own gallantry

and energy, to which his antagonist bore witness, as a means of proving Porter guilty of cowardice and inefficiency. Pope's attention has often been called to the error, but I have not heard that he has yet endeavored to correct it.

On the afternoon of the 30th of August, Porter's command led the hopeless and ill-judged attack upon Jackson's lines. The assault was described by rebel officers, as "determined and most obstinate." Jackson said it was impetuous and well sustained; it engaged his entire line in a fierce and sanguinary struggle, and so "severely pressed" him, that he sent to Lee for reënforcements. Porter's command lost over 2,100 men, out of 6,000 present. So much for the disloyalty and lack of bravery of an officer who had won most honorable mention in the Army of the Potomac, for skill and gallantry; who had borne the brunt of the attack at Malvern Hill, and received for his services the commissions of Brevet Brigadier-General in the regular army, and Major-General of volunteers; who was brevetted as Captain and Major for services in the Mexican war, and was wounded in the assault on the City of Mexico.

The truth is, Pope was beaten by his own mismanagement. His ideas and the disposition of his forces were (with one transient exception), so thoroughly erroneous, and he showed such a capacity for refusing to accept correct information from persons or events, that disaster was inevitable. "What he should not have done he did with frightful energy, and what he should have done he culpably neglected to do."* Lee

* Gordon's "Army of Virginia," page 462.

himself was surprised. He expected nothing from Jackson's movement, but a formidable raid to save Gordonsville; and he "moved from victory to victory," until he seriously menaced the Capital, and began an invasion of the North.*

It was not through any fault of officers or soldiers that Pope was beaten. Officers served him as well as they could, whatever they thought of him; and—

"Tho' the soldier knew
Some one had blunder'd,"

he did not fail or falter in bravery or fidelity. The toilsome marches by day and night, the privations endured—for the army was in a condition little short of actual starvation—and above all, as Porter said, the "killed and wounded and enfeebled troops attest *their* devotion to duty."

One needs to consider only the methods of the commander as applied to the existing conditions, his faculty of painting everything (even his reports) with the colors of the imagination, to find ample explanation of his failure. Porter, who deserved as well of the Republic as did any officer in the army, has been for twenty years the chief sufferer for Pope's misstatements and mistakes. It now remains for the people, through their representatives in Congress, to right the grievous wrong inflicted upon one who, in two wars, served his country faithfully and gallantly.

As the case stands to-day, Porter is fully vindicated by the highest military authorities of this and other nations; by the most eminent statesmen and jurists in

* Gordon's "Army of Virginia," page 463.

the land ; and by all intelligent and fair-minded men who know the facts. He can afford to remain, like Belisarius, in silence and in poverty, intrusting to History his bright achievements and unsullied fame.

But the Government cannot safely leave its repute to History, if, after having before it overwhelming evidence of the terrible wrong inflicted upon a faithful servant, it delays for one unnecessary hour, the inadequate reparation which can yet be made.

THE END.

